

# **CA INTER - GST PATH BOOK – AMENDMENT NOTES FOR MAY 2024**

**(AMENDMENTS PDF BY CA YASHVANT MANGAL)**

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	➤ All the provisions of the act shall apply to such recipient as if he is the person liable for paying the tax.
Tax payable by the electronic commerce operator [Sec. 9(5)/5(5)]	The Government may notify categories of services, the tax on supplies of which shall be paid by electronic commerce operator (ECO) as if such services are supplied through it and all the provisions of the act shall apply to such ECO as if ECO is the supplier liable for paying the tax. [Eg. Uber, Ola, Swiggy, etc.]

#### Person liable to pay tax :

Forward Charge Sec. 9(1) / 5(1)	Supplier of Goods/Service
Reverse Charge Sec. 9(3) / 9(4) / 5(3) / 5(4)	Recipient of Goods/Service
E- Commerce Sec. 9(5) / 5(5)	ECO

#### Goods or Services imported in India:

- Import of goods or services are treated as inter-state supplies as per provisions of IGST Act, 2017.
- On import of goods, IGST is levied alongwith Customs duty. But, on import of services, only IGST is levied.
- Further, under GST, "online money gaming" is treated as goods on import of which only IGST is levied but Customs duty is not levied.
- As per Sec. 2(105) of the CGST Act, "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims; [Proviso inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

### TAXABLE EVENT UNDER GST = SUPPLY [SECTION 7]

**सीधी बात...Supply होगा तो GST लगेगा...NO SUPPLY NO GST**

Statutory Provisions	
Sec. 7	Meaning and Scope of Supply
(1)	Supply includes (सिर्फ "तुम ही हो" नहीं... "तुम भी हो" ...)-



employee. But, if any amount is paid to whole time director in the capacity of employee, then, no GST will be charged on the same.

(ii) Further, GST on the services provided by a director (not in the capacity of employee) to the company or body corporate is chargeable to GST under Reverse Charge Mechanism u/s 9(3) of the CGST Act, 2017 (i.e. company or body corporate will be liable to pay GST to the government directly on the amount paid to director). It means, every company or body corporate paying any amount to director, not in the capacity of employee, shall be compulsorily required to get themselves registered under GST law and consequentially, all the provisions of GST law would be attracted.

(iii) Non compete fees received by an employee from employer is taxable as it is not in the course of or in relation to employment.

2. Services by any Court or Tribunal established under any law for the time being in force.  
**Explanation :** The term "Court" includes District Court, High Court and Supreme Court.

3. (a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;  
(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or  
(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

जाने वाले से कौन GST ले सकता है...

5. Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.

Rental, leasing, licensing of land and building	Treated as supply of service [GST is applicable]
Sale of flats, etc. in a building before completion certificate or 1 <sup>st</sup> occupancy, whichever is earlier	Treated as supply of service under para 5(b) of Sch. II [GST is applicable]
Sale of land and building	Not treated as supply as per para 5 of Sch. III [GST is not applicable]

6. Actionable claims, other than ~~lottery, betting and gambling~~ specified actionable claims. [As amended by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

जुआ खेलोगे तो GST देना पड़ेगा...

**Note:** As per Sec. 2(102A), "specified actionable claim" means the actionable claim involved in or by way of betting, casinos, gambling, horse racing, lottery or online money gaming. Further, the applicable rate of GST on specified actionable claims is 28%.



As per Sec. 2(80A) "online gaming" means offering of a game on the internet or an electronic network and includes online money gaming; [inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

As per Sec. 2(80B) "online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force; [inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

As per Sec. 2(117A) "virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961; [inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

**Example :** M/s Rohit ASREC Ltd. procured a portfolio of NPAs (of Rs. 50 crores) from Pankaj Bank Ltd. for a consideration of Rs. 7 crores (under the provisions of SRFAESI Act, 2002). Whether GST is leviable on Rs. 7 crores ?

**Solution :** A transaction of procurement of a portfolio of NPAs is a transaction in actionable claim and is covered under para 6 of Schedule III of the CGST Act, 2017. Therefore, no GST would be charged on this transaction.

#### Clarification in respect of levy of GST on Director's remuneration [Circular No: 140/10/2020-GST, dated 10.06.2020]

##### 1. Levibility of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

The primary issue to be decided is whether or not a "Director" is an employee of the company. In respect of independent directors or those directors who are not the employees of the company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. Further, in this case, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

##### 2. Levibility of GST on remuneration paid by companies to the directors, who are also an employee of the said company

Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service".



- (i) **Assessee supplying goods is not required to pay GST on advance payment received [NN 66/2017-CT, w.e.f. 15.11.2017]:** The registered person who did not opt for the composition levy u/s 10 of the CGST Act, has been notified as the class of persons who shall pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a) of the CGST Act [i.e. the Date of issue of invoice (date of actual issue or last date when it should be issued u/s 31)], irrespective of the actual receipt of payment in respect of such supply.

However, this benefit is not available to the registered persons making supply of "specified actionable claims" as defined u/s 2(102A). It means, in respect of supply of "specified actionable claims", GST shall be required to be paid at the time of supply as specified in section 12(2)(a) or section 12(2)(b), whichever is earlier [i.e. Date of issue of invoice (date of actual issue or last date when it should be issued u/s 31) or Date of receipt of payment (to the extent payment is received), whichever is earlier.] In nut shell, GST will be required to be paid on advances received in respect of supply of "specified actionable claims". [Inserted by NN 50/2023 - CT, w.e.f. 01.10.2023]

[In Simple Words, Forward Charge में Goods के Case में TOS निकालते Time सिर्फ Date of invoice ही देखना है]

- (ii) **Significance of 'to the extent supply is covered by the invoice' :** The TOS, as discussed above shall be only to the extent of the amount covered in the invoice i.e., suppose, invoice is issued for part value, the time of supply will not cover the full supply. The supply shall be deemed to have been made to the extent it is covered by the invoice. [बोले तो...जितने Amount का Invoice, उतने का ही TOS आएगा]

**Example:** A Ltd. enters into an agreement with B Ltd. to supply 100 kg of raw material. However, A Ltd. supplies only 80 kg of raw material and issues the invoice for the same. Here, the supply would be deemed to have been made in respect of 80 kg of raw material, i.e. to the extent covered by the invoice. Therefore, the provisions relating to time of supply will only be applicable to supply of 80 kg of raw material and not for entire 100 kg of raw material.

- (iii) **Time limit for issuance of invoice for supply of goods [Sec. 31]:**

- As per Section 31(1), the invoice needs to be issued either before or at the time of removal (where supply involves movement of goods) of goods/delivery of goods/ making goods available to the recipient.
- In case of continuous supply of goods, the invoice should be issued before or at the time of issuance of periodical statement/receipt of periodical payment [Section 31(4)]

As per Sec. 2(32) of the CGST Act, 2017, "continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

- In case of goods sent or taken on approval for sale or return, invoice should be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier [Section 31(7)].



**Answer :** As per first proviso to Section 16(2), where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment. Therefore, in the given case, Abhinav Nathany is not eligible to take credit on proportionate basis, because inputs have been received in lots. Hence, the credit of tax of Rs. 90,000 i.e. (Rs. 5,90,000  $\times$  18  $\div$  118) paid on such inputs shall be taken by Abhinav Nathany only after receipt of Third lot i.e., on 01-10-2018.

#### IV. Payment for the invoice to be made within 180 days [Second proviso to section 16(2) read with rule 37 of CGST Rules]

If the recipient, who has availed input tax credit on any inward supply of goods or services or both, fails to pay to the supplier, the value of the goods and/or services, whether wholly or partly, along with the tax within 180 days from the date of issue of invoice, then, such ITC availed by the recipient in respect of such supply, proportionate to the amount not paid to the supplier, would be paid or reversed by him along with applicable interest while furnishing the return in Form GSTR-3B for the tax period in which the said 180 days expired.

**Exception:** This condition of payment of value of supply plus tax within 180 days does not apply to the supplies on which tax is payable under reverse charge mechanism.

#### Note:

- The value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of this provision.
- The value of supplies on account of any amount added in accordance with the provisions of section 15(2)(b) shall be deemed to have been paid for the purposes of this provision.
- Interest will be payable @ 18% p.a. from the date of utilising the ITC till the date when it is reversed or paid to the Government after adding it to the output tax liability.

However, subsequently, when the recipient makes the payment to the supplier, the recipient will be entitled to re-avail the credit again without any time limit specified u/s 16(4). In case part payment has been made, proportionate credit will be allowed.

**Illustration 6 :** M/S PQR Pvt. Ltd. availed services of a contractor. And, it withheld 10% retention money from the invoice value of the contractor for 1 year as per terms of the contract and made payment of only 90% of the invoice amount.

M/S PQR Pvt. Ltd. withheld 10% of the amount payable as retention money for 1 year (i.e. more than 180 days) as per the terms of the contract which is not a failure in making payment on the part of recipient. Therefore, in such case, No ITC is required to be added to be reversed or paid. Because, as per terms of the contract, recipient did not failed to make payment to the supplier within 180 days.

**Illustration 7 :** Due to a quality dispute, ABC Ltd. withheld payment on a machine supplied by a vendor till it could be rectified. Over 180 days went by in this dispute. The credit taken by ABC on the invoice would be reversed or paid by ABC. Only after the vendor rectified the machine and ABC released the payment, could ABC take the credit again.

#### V. If depreciation claimed on GST component of Capital Goods, then, ITC not allowed [Section 16(3)]

If the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the



(e)	goods or services or both on which tax has been paid under section 10;
(f)	goods or services or both received by a non-resident taxable person except on goods imported by him;
(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; [inserted by Finance Act, 2023, w.e.f. 01.10.2023]
(g)	goods or services or both used for personal consumption;
(h)	goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and [Khurana Woolen Mills Ltd. (P&H) – 2012
(i)	any tax paid in accordance with the provisions of sections 74, 129 and 130.

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

(i)	land, building or any other civil structures;
(ii)	telecommunication towers; and
(iii)	pipelines laid outside the factory premises.

**Explanation (1) to Rule 45 of CGST Rules, 2017 :** The expression "Capital Goods" shall include "Plant and Machinery" for the purposes of CGST Rules, 2017.

## ANALYTICAL VIEW OF THE TOPIC

### Blocked Credits [Section 17(5)]

ITC of tax paid on almost every inputs and input services used for supply of taxable goods or services or both is allowed under GST except a small list of items provided u/s 17(5). The negative list covers mainly items of personal consumption, inputs use of which results into formation of an immovable property (except plant and machinery), telecommunication towers, pipelines laid outside the factory premises, etc. and taxes paid as a result of detection of evasion of taxes. The detailed list is given hereunder:

### (a) ITC related to Motor Vehicles, Vessels and Aircrafts

#### I. Analysis of ITC on Motor Vehicles [Sec. 17(5)(a)]:

- ITC of GST paid on motor vehicles designed for transportation of persons having approved seating capacity of not more than 13 persons (including the driver) shall not be allowed, even if such vehicles are used in the course or furtherance of business [e.g. Cars, etc. used for transportation of employees, directors, etc.], except when they are used for making the **following taxable supplies**, namely:–
  - further supply of such motor vehicles; or
  - transportation of passengers; or



2. No ITC is admissible in respect of any works contract service or any service used in construction, repairs, renovation, etc. of any building, etc. except when such services are used in providing the said works contract or construction services or except when such services are used in installation or construction of plant & machinery [as per section 17(5)(c) and 17(5)(d)].
3. As per explanation given below Section 17(5)(d), the expression "construction" includes re-construction, renovation, additions or alteration or repairs, to the extent of capitalization, to the said immovable property. It means, if any input or input services are used for repairing, etc. of immovable property, which is revenue expenditure in nature (i.e. not capitalized in the books of accounts), then, ITC of GST paid on such inputs and input services shall be available to the registered person.

(e) Inward supplies on which tax has been paid under the composition scheme

(f) Inward supplies received by a non-resident taxable person (NRTP) except goods imported by him

**Note:** ITC of GST paid on any goods and/or services received by any NRTP is not available. However, ITC of GST paid on goods imported by NRTP is allowed. Further, ITC of GST paid on services imported by him is also blocked.

(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 [inserted by Finance Act, 2023, w.e.f. 01.10.2023]

(g) Goods and/or services used for personal consumption

**Example:** Mr. X owns a grocery store. He procures rice, wheat and biscuits for being sold in its store. Out of the inventory so purchased, he gives 10 kgs each of rice and wheat to his wife for household use. Being used for personal consumption, ITC on 10 kg of rice and 10 kg of wheat is blocked.

(h) Goods that are lost, stolen, destroyed, written off or disposed of by way of gift or free samples

ITC in respect of goods that are disposed of by way of gift or free samples is not available. Also, ITC is blocked on lost goods, stolen goods, destroyed goods and goods that are written off. This is because principally, ITC is available only for payment of tax on output supply. If no tax is payable on output supply, ITC on inputs/input services/capital goods relating to such output supply is not eligible. Hence, ITC on gifts and free samples is blocked as no tax is payable on its outward supply. In case of lost/destroyed/stolen written off goods also, ITC is not available as these goods cannot be said to have been used for making a taxable supply.

(i) Tax paid under sections 74, 129 and 130: These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.

**Illustration 16 :** Surana construction is engaged in supply of works contract services for construction of immovable property. It gives a part of the construction work to a sub-contractor. The sub-contractor charges GST in his invoice to Surana construction. You are required to advise Surana construction if it can avail Input tax credit of the GST charged to it by the subcontractor.



State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess;

- ii. **For Trader** : The tax under composition scheme is to be paid (@ 1%) on the turnover of only Taxable goods or services, not exempt goods or services.

**6. Persons, not eligible to opt for composition scheme [Section 10(2)] :**

- (a) A person who is engaged in supply of service except restaurant & outdoor catering service. However, if an eligible person (i.e. supplier of goods or restaurant & outdoor catering service supplier) who has opted for composition scheme may supply services (other than restaurant & outdoor catering service), of value not exceeding Rs. 5,00,000/- or 10% of turnover in a State or Union territory in the preceding financial year, whichever is higher.

Further, while computing value of services supplied during current financial year, interest or discount earned on loans, advances or deposits will not be taken into account. [CGST (Removal of difficulties) Order No. 01/2019 – CT, w.e.f. 01.02.2019]

Further, for the purposes of computing limit of “10% of turnover in a State or Union territory in the preceding financial year”, the interest or discount earned on loans, advances or deposits shall not be taken into account for determining the value of turnover in a State or Union territory.

**Example:**

Vivek is engaged in supply of goods. His aggregate turnover in preceding FY is Rs. 84 lakh (including Rs. 4 Lakhs interest or discount earned on loans, advances or deposits). Since, his aggregate turnover in the preceding FY does not exceed Rs. 1.5 crore, he is eligible for composition scheme in current FY. Further, in current FY, he can supply services [other than restaurant & outdoor catering services] upto a value of not exceeding:

- (a) 10% of Rs. 80 lakh, i.e. Rs. 8 lakh

or

- (b) Rs. 5 lakh,

whichever is higher. Thus, he can supply services upto a value of Rs. 8 lakh in current FY. If the value of services supplied exceeds Rs. 8 lakh, he becomes ineligible for the composition scheme and has to opt out of the composition scheme. However, interest or discount earned during current financial year on loans, advances or deposits shall not be taken into account while computing limit of Rs. 8 lakhs in current financial year.

- (b) Supplier of goods or services which are not leviable under the CGST Act/SGST Act/UTGST Act.
- (c) **Supplier of inter-State outward supplies** of goods or services.
- (d) Person supplying ~~goods or~~ services through an electronic commerce operator, who is required to collect tax at source under section 52. [Words “goods or” omitted by Finance Act, 2023, w.e.f. 01.10.2023]



amount of tax calculated at such rate as may be prescribed, but not exceeding 3% (CGST) of the turnover in State or turnover in Union territory.

**Tax payable under the Scheme as notified by NN 02/2019 – CT (R) :**

Description of Supply	Rate of GST (CGST + SGST)
First supplies of goods or services or both upto an aggregate turnover of Rs. 50 lakhs made on or after the 1st day of April in any financial year, by a registered person.	3% + 3% = 6% of value of all outward supplies (including exempt supplies) of goods or services or both irrespective of actual rate of tax. [Same rate of tax is prescribed by Rule 7 of the CGST Rules, 2017. Wordings used in Rule 7 are 3% + 3% = 6% of the turnover of supplies of goods and services in the State or Union Territory.]

**Explanation** – For the purposes of determining the tax payable by a person under this section, the expression “turnover in State or turnover in Union territory” shall not include the value of following supplies, namely:--

- (i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and
- (ii) amount of interest or discount earned on loans, advances or deposits extended.

**Persons, not eligible for the composition levy [Section 10(2A) read with NN 02/2019 – CT(R)] :**

Any assessee can opt for composition levy scheme under section 10(2A), if–


- (a) his aggregate turnover in the preceding financial year was Rs. 50 lakhs or below;
- (b) he is not eligible to pay tax under sub-section (1) of section 10 of the said Act;
- (c) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;
- (d) he is not engaged in making any inter-State outward supplies of goods or services;
- (e) 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; [Words “goods or” omitted by Finance Act, 2023, w.e.f. 01.10.2023]
- (f) he is neither a casual taxable person nor a non-resident taxable person; and
- (g) he is not a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council. Using this power, government has notified that the manufacturer of the following goods shall not be eligible for this scheme:

1	Ice cream and other edible ice, whether or not containing cocoa
2	Pan masala
3	Aerated Water, containing added sugar or other sweetening matter or flavoured [Eg. Pepsi, Coca-cola, etc.]
4	All goods, i.e. Tobacco and manufactured tobacco substitutes
5	Fly ash bricks; fly ash aggregates; Fly ash blocks



<p>or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person</p>		<p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person registered under GST, located in the taxable territory.</p>
<p>However, RCM on GTA service shall <b>not apply</b></p> <p>(i) to services provided by a GTA to, -</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies,</p> <p>which has taken registration under the GST only for the purpose of deducting TDS u/s 51 and not for making a taxable supply of goods or services.</p> <p>(ii) where, -</p> <p>(a) the supplier (GTA) has taken registration under GST and exercised the option to pay GST under forward charge mechanism on the services of GTA; and</p> <p>(b) the supplier (GTA) has issued a tax invoice to the recipient charging GST at the applicable rates and has made following declaration on such invoice issued by him:          "I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us from the Financial Year _____ under forward charge and have not reverted to reverse charge mechanism." [as amended by NN 08/2023 - CT (R), w.e.f. 27.07.2023]</p> <p>(c) Further, the option exercised by GTA to itself pay GST on the services supplied by it during a Financial Year shall be deemed to have been exercised for the next and future financial years unless the GTA files a declaration to revert under reverse charge mechanism on or after the 1<sup>st</sup> January of the preceding Financial Year but not later than 31<sup>st</sup> March of the preceding Financial Year. [Proviso inserted by NN 06/2023 - CT (R), w.e.f. 27.07.2023]</p> <p>(d) Further, a GTA who commences new business or crosses threshold for registration during any Financial Year, may exercise the option to itself pay GST on the services supplied by it during that Financial Year by making a declaration before the expiry of 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration, whichever is later [Proviso inserted by NN 05/2023 - CT (R), w.e.f. 09.05.2023]</p> <p>[also refer analysis given at the end of this table]</p>		

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2.	<p>Services provided by an individual <b>advocate</b> including a senior advocate or firm of advocates by way of legal services, directly or indirectly.</p> <p>Explanation.- "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority." [also refer analysis given at the end of this table]</p>	<p>An individual advocate including a senior advocate or firm of advocates</p> 	<p>Any <b>business entity</b> located in the taxable territory.</p>
3.	<p>Services supplied by an <b>arbitral tribunal</b> to a business entity.</p>	<p>An arbitral tribunal</p>	<p>Any <b>business entity</b> located in the taxable territory.</p>
4.	<p>Services provided by way of <b>sponsorship</b> to any body corporate or partnership firm.</p>	<p>Any person</p>	<p>Any <b>body corporate</b> or partnership <b>firm</b> located in the taxable territory.</p>
5.	<p>Services supplied by the <b>Central Government, State Government, Union territory or local authority</b> to a business entity excluding, -</p> <p>(1) renting of immovable property, and</p> <p>(2) Services specified below -</p> <p>(i) services by the Department of Posts and the Ministry of Railways (Indian Railways) [As amended by NN. 14/2023 - CT (R), w.e.f. 20.10.2023];</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p> <p>[Provisions of RCM, in so far as they apply to the CG and SG, shall also apply to the Parliament, State Legislatures, Courts and Tribunals (Words 'Courts and Tribunals' inserted</p>	<p>Central Government, State Government or Union territory or local authority</p>	<p>Any <b>business entity</b> located in the taxable territory.</p>



	by NN 02/2023 - CT (R), w.e.f. 01.03.2023)]		
5A.	Services supplied by the <b>Central Government</b> excluding the Ministry of Railways (Indian Railways), <b>State Government, Union territory or local authority</b> by way of <b>renting of immovable property</b> to a person registered under GST [As amended by NN. 14/2023 - CT (R), w.e.f. 20.10.2023]	Central Government, State Government, Union Territory or Local Authority	Any <b>person registered</b> under GST
5AA	Service by way of renting of residential dwelling to a registered person	Any person	Any <b>person registered</b> under GST
5B.	Services supplied by any person by way of <b>transfer of development rights (TDR) or Floor Space Index (FSI)</b> (including additional FSI) for construction of a project by a promoter. [also refer analysis given at the end of this table]	Any person	<b>Promoter</b>
5C.	<b>Long term lease of land (30 years or more)</b> by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter. [also refer analysis given at the end of this table]	Any person	<b>Promoter</b>
6.	Services supplied by a <b>director</b> of a company/body corporate to the said company/ body corporate.	A director of a company or a body corporate	The <b>company or a body corporate</b> located in the taxable territory.
7.	Services supplied by an <b>insurance agent</b> to any person carrying on insurance business.	An insurance agent	Any person carrying an <b>insurance business</b> , located in the taxable territory.
8.	Services supplied by a <b>recovery agent</b> to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A <b>banking company</b> or a financial institution or a non-banking financial company, located in the taxable territory.

(c) "renting of immovable property" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

**List of Additional services taxable under reverse charge under IGST Act (NN. 10/2017 IT (R) dated 28.06.2017)** : All the services which have been notified for RCM purposes under CGST Act (as given above) have also been notified for RCM under IGST Act. Further, following 1 service is additionally included under RCM for IGST purposes:

S.N.	Category of Supply of Service	Supplier of Service	Recipient of Service
1	Any service <b>supplied by any person who is located in a non taxable territory</b> to any person, other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory, other than non taxable online recipient.

## 7.2 Sec. 9(5) of CGST Act : Tax Payable by the Electronic Commerce Operator (ECO) on Notified Services

Electronic Commerce Operator (ECO) means any person who owns/operates/manages an electronic platform for supply of goods or services or both.

Sometimes, ECO itself supplies the goods or services through its electronic portal. However, many a times, the products/services displayed on the electronic portal are actually supplied by some other person to the consumer. When a consumer places an order for a particular product/ service on this electronic portal, the actual supplier supplies the selected product/ service to the consumer. The price/ consideration for the product/ service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO.

The Government may, on the recommendations of the GST Council, notify specific categories of services the tax [CGST/SGST/IGST] on supplies of which shall be paid by the electronic commerce operator (ECO) as if such services are supplied through it. Few services have been so notified.

Notification No. 17/2017 CT (R) and Notification No. 14/2017 IT (R) dated 28.06.2017, as amended, has notified the following categories of services supplied through ECO for this purpose -

- (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, omnibus or any other motor vehicle **except omnibus** (e.g. OLA, Uber, Rapido, etc.) [as amended by NN 16/2023-CT(R), w.e.f. 20.10.2023];
- (ii) **services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company or** [inserted by NN 16/2023 - CT(R), w.e.f. 20.10.2023];

**Analysis of Amendment for Bus Operators:**



The representation was filed by the bus operator's association that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take GST registration and meet GST compliances.

Therefore, w.e.f. 01.01.2022, the liability to pay GST on bus transportation services supplied through ECOs has been placed on the ECO under section 9(5) of the CGST Act, 2017. But, at the same time, due to this provision, the larger organized entities were unable to avail Input Tax Credit (ITC) on inward goods and services, because they were not liable to pay GST on the aforesaid services.

Therefore, in order to strike a balance between the requirement for simplifying business operations for small operators and the necessity for larger organized entities to avail ITC on inward goods and services, the government specifically excluded "Company" omnibus operators from the scope of section 9(5) of the CGST Act, 2017. [Further, "Company" means Company as defined u/s 2(20) of the Companies Act, 2013.]

- (iii) services by way of providing accommodation in hotels, inns, guest houses, clubs, Campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration u/s 22(1) of the CGST Act. (e.g. Tripadvisor, goibibo, etc.)
- (iv) services by way of house-keeping, such as plumbing, carpentering, etc., except where the person supplying such services through electronic commerce operator is liable for registration u/s 22(1) of the CGST Act. (e.g. urbanclap.com, zimmbber.com, etc.)
- (v) Supply of restaurant service other than the service supplied by restaurant, eating joints etc. located at specified premises. (e.g. Swiggy, Zomato, etc.) [Specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above Rs. 7,500/- per unit per day or equivalent.]
- **Radio Taxi** means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).
- **Maxicab, Motorcab, Motor cycle, Motor Vehicle and Omnibus** shall have the same meanings as assigned to them respectively in clauses (22), (25), (27), (28) and (29) of section 2 of the Motor Vehicles Act, 1988.
- **As per Motor Vehicles Act, 1988 :**
  - **Maxicab** means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers, excluding the driver, for hire or reward.
  - **Motorcab** means any motor vehicle constructed or adapted to carry not more than 6 passengers excluding the driver for hire or reward.



- (b) where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such (third) person;
- (c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;
- (ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.
- Explanation.— For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;
- (d) where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;
- (e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.
- (2) Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.

**Illustration 2 : Section 10(1)(a) - Supply involves movement of goods**

Particulars	Supplier's factory from where goods are removed	Termination of movement for delivery	Place of supply	Tax Payable
Movement of goods by the supplier (goods dispatched by supplier) [Section 10(1)(a) read with 2(96)(a) of CGST Act]	Rajasthan	Assam	Assam	IGST payable at Rajasthan
	Rajasthan	Rajasthan	Rajasthan	CGST / R-SGST payable at Rajasthan
Movement of goods by the recipient (goods collected by recipient) [Section 10(1)(a) read with 2(96)(b) of CGST Act]	M.P.	Goa	Goa	IGST payable at M.P.
	M.P.	M.P.	M.P.	CGST / MP-SGST payable at M.P.

**Illustration 3 : Section 10(1)(b) - Supply involves movement of goods, and delivered to a person on the instruction of a third person**



**Solution :** As per section 12(7) of IGST act, 2017 (as both recipient and supplier are in India), the place of supply of services provided by way of assigning of sponsorship to such events place of supply shall be as follows –

- (i) if recipient of service is an unregistered person and event is held in India, then, place of supply = Place where event is actually held i.e. Bengaluru.
- (ii) if recipient of service is an unregistered person and event is held outside India, then, place of supply is location of the recipient i.e. Pune.
- (iii) if recipient of service is a registered person, then, place of supply = location of such person = Pune (in both the cases viz. whether product launch takes place in Bengaluru and Bangkok).

- (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.

~~However, where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.~~



**Illustration 26 :** M/s Sukhiram Pvt. Ltd. is a registered company in New Delhi. It sends its courier to Pune through M/s Brue Air Courier Service. The recipient being registered person, the place of supply is the location of recipient, i.e. New Delhi.

**Illustration 27 :** Mr. Bindisaar, an unregistered person, of New Delhi sends a courier to his brother in Amritsar, Punjab. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. New Delhi.

**Illustration 28 :** Pinelaps Pvt. Ltd., a Goods Transportation Agency based in Kanpur, Uttar Pradesh, is hired by Hezal Enterprises (registered supplier in Kanpur) to transport its consignment of goods to a buyer in New Delhi. The recipient being registered, the place of supply is the location of recipient, i.e. Kanpur.

**Illustration 29 :** Sukhwinder Transports Pvt. Ltd., a Goods Transportation Agency based in Noida, Uttar Pradesh, is hired by Chhaya Trade Links (registered supplier in New Delhi) to transport its consignment of goods to a buyer in Kanpur, Uttar Pradesh. The recipient being registered, the place of supply is the location of recipient, i.e. New Delhi.

**Illustration 30 :** Mr. Srikant, a manager in a Bank, is transferred from Bareilly, Uttar Pradesh to Bhopal, Madhya Pradesh. Mr. Srikant's family is stationed in Kanpur, Uttar Pradesh. He hires Goel Carriers of Lucknow, Uttar Pradesh (registered in Uttar Pradesh), to transport his household goods from Kanpur to Bhopal. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. Kanpur.

- (9)** The place of supply of **passenger transportation service** to, –
- (a) a registered person, shall be the location of such person;



- (2) All the services provided by courier agency are excluded from the exemption list and hence, taxable. The nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency. Similarly, 'Angadia' who undertakes delivery of documents, goods or articles received from a customer to another person for a consideration is also covered within the scope and definition of the courier agency and hence, liable to GST.
- (3) The services of transportation of goods by railways and by air within the country or abroad are not covered in the exemption list and hence, taxable.
- (4) The services of transportation of goods by a vessel other than in inland waters or national waterways i.e. in the coastal waters of India, are not covered in the exemption list and hence, taxable.
- (5) The services provided as agents for inland waterways are not covered by exemption list and hence, taxable.
- (6) Clarification on Taxability of transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time and whether the same would be covered under aforesaid Entry which exempts transport of goods by road except by a GTA [Circular]
- Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.
  - Such services are nothing but "rental services of transport vehicles with operator". The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations. The person who gives the vehicles on rent with operator can not be said to be supplying the service by way of transport of goods.
  - Accordingly, it is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator and not service of transportation of goods by road and hence, it is not eligible for exemption under aforesaid Entry (i.e. transport of goods by road except by a GTA).

5. **Satellite launch services** supplied by ~~Indian Space Research Organisation (ISRO), Antrix Corporation Limited or New Space India Limited.~~

*Analysis of Amendment:* W.e.f. 27.07.2023, the exemption to Satellite launch services has been extended to all the organisations including private organisations to encourage start-ups.

6. Services by way of **transportation by rail or a vessel** from one place in India to another of the following goods –
- (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
  - (b) defence or military equipments;



or local authority **excluding** the following services –

- (a) services by the **Department of Posts** and the **Ministry of Railways** (Indian Railways);
- (b) services in relation to an **aircraft or a vessel**, inside or outside the precincts of a port or an airport;
- (c) **transport of goods or passengers**; or
- (d) **any service, other than** services covered under entries (a) to (c) above, **provided to business entities**.



[Entry No. 6 of NN. 12/2017 CT (R)]

Analysis :

- (1) Any service provided by the Central Government, State Government, Union territory or local authority will not be chargeable to GST except aforesaid 4 categories of services [covered under (a) to (d) above] i.e. in case of these 4 categories of services, GST will be leviable.
- (2) The basic idea behind taxing certain activities of the Government or local authorities is to provide equal competition to private entities in these areas and to avoid break in Input Tax Credit chain as the taxable services provided by the Government are normally in the nature of intermediary services.
- (3) As per clause (d) of this entry, any service, (other than services covered under clauses (a) to (c) above), provided to business entities by govt. or local authority are taxable as these are excluded from the exemption list. But, in this case, if the service recipient is other than business entity, then, GST shall not be payable as it is not excluded from the exemption list.
- (4) 'Business entity' means any person carrying out business.
- (5) Further, various other services of government and local authority are also exempted from GST by adding various other entries in this Exemption List, which is discussed in following paras of this chapter.
- (6) Furthermore, some services provided to Government, etc. are also exempt from GST by adding various other entries in this Exemption List, which is also discussed in following paras of this chapter.
- (7) As per the settled position of law, the term 'Government' include various departments of the Government (e.g. Income tax department, Police Department, etc.), but, various government companies registered under the Companies Act, 2013, corporations formed under Central Acts or State Acts or autonomous institutions set up by a special Act are not included in the term 'Government'. Therefore, services provided by/to such entities are not entitled for exemptions given in various exemption entries relating to the 'Government'. It would also not include regulatory bodies.
- (8) For the services provided by the Government to business entities [covered under clause (d) above, except Renting of Immovable Property to unregistered person], the government departments will not have to get themselves registered under GST for paying GST, because,



**more than 25% of the value** of the said composite supply

- provided to the Central Government, State Government or Union territory or local authority ~~or a Governmental authority or a Government Entity~~
- by way of any activity:
- in relation to any function entrusted to a Panchayat under article **243G** of the Constitution or
- in relation to any function entrusted to a Municipality under article **243W** of the Constitution.

**Clarification on Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments [Circular]**

1. The functions entrusted to Municipalities and Panchayats under articles 243W & 243G of the Indian Constitution also include the activities of Sanitation and conservancy services.
2. If such services are provided to Indian Army or any other Government Ministry/Department, in the same manner as a local authority does for the general public, then, the same will be eligible for aforesaid exemption. Otherwise, it will be chargeable to GST.

**Clarification on whether supply of pure services and composite supplies by way of horticulture / horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to Central Public Works Department (CPWD) are eligible for exemption from GST. [Circular]**

1. Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.
2. Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W of the constitution.
3. Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of NN 12/2017 - CT (R).

33. Services provided to a Governmental Authority by way of -  
 (a) Water supply; (b) Public health; (c) Sanitation conservancy; (d) Solid waste management; and  
 (e) Slum improvement and upgradation.

**Clarification on whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority [Circular]**

DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of

Not in ICAI

Not in ICAI



	<p>medical equipment, etc.</p> <p>These activities are similar to activities that are enlisted in 11<sup>th</sup> Schedule and 12<sup>th</sup> Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, Self Help Groups of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.</p> <p>Accordingly it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.</p>				
34.	Services provided to the Central Government, State Government or Union territory under any <b>insurance scheme</b> for which <b>total premium is paid by</b> the Central <b>Government</b> , State Government or Union territory.				
35.	Services provided to the Central Government, State Government, Union territory administration under <b>any training programme</b> for which <b>75% or more of the</b> total <b>expenditure</b> is <b>borne by</b> the Central <b>Government</b> , State Government or Union territory.				
36.	<p>Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a <b>Regional Connectivity Scheme airport</b>, against consideration in the form of viability gap funding.</p> <p>However, nothing contained in this entry shall apply on or after the expiry of a period of 3 years from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.</p>				
37.	Service provided by <b>Fair Price Shops to Central Government, State Government or Union Territory</b> by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against consideration in the form of <b>commission or margin</b> .				
38.	Taxable services, provided or to be provided, by a Technology Business Incubator ( <b>TBI</b> ) or a Science and Technology Entrepreneurship Park ( <b>STEP</b> ) recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or <b>bio-incubators</b> recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India.				
39.	<p>Services provided by an <b>incubatee</b> up to a total turnover of Rs. 50 lakh in a financial year subject to the following conditions, namely :</p> <p>(a) the total turnover had not exceeded Rs. 50 lakh during the preceding financial year; and</p> <p>(b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee.</p> <p><b>Notes :</b></p> <p>(1) '<b>Incubatee</b>' means an entrepreneur located within the premises of a TBI or STEP.</p> <p>(2) <b>Example :</b></p> <table border="1" data-bbox="256 1927 1490 1980"> <thead> <tr> <th>Year</th> <th>Total Turnover</th> <th>Exempted Turnover</th> <th>Taxable Turnover</th> </tr> </thead> </table>	Year	Total Turnover	Exempted Turnover	Taxable Turnover
Year	Total Turnover	Exempted Turnover	Taxable Turnover		



2.	Is the RWA entitled to take ITC of GST paid on goods and services used by it for making taxable supplies to its members ?	RWAs are <b>entitled to take ITC</b> of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), inputs (taps, pipes, other sanitary/hardware fillings etc.) and input services (such as repair and maintenance services).
3.	Where a person owns 2 or more flats in the housing society, whether the ceiling of Rs. 7500/- per month per member shall be applied per residential apartment or per person?	The ceiling of <b>Rs. 7500/-</b> per month per member shall be <b>applied separately for each residential apartment</b> owned by him.
4.	How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member?	In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST shall be payable on the <b>entire amount</b> of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/- .

7. Services provided by an **unincorporated body or a non-profit entity** registered under any law for the time being in force, engaged in,-
- activities relating to the welfare of **industrial or agricultural labour or farmers**; or
  - promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of one thousand rupees (**Rs 1000/-**) per member per year.

Clarification on whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators, etc. from their lessees / occupants [Circular]

Issue: Applicability of GST on supply of electricity by the real estate companies, malls, airport operators, etc., to their lessees or occupants.

*Not in ICAI*

Clarification: It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise and the supply of electricity is an ancillary supply. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise would be applicable.

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State



Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

#### **Illustration 14 : Services Provided by Unincorporated Association**

Compute value of taxable services from the following receipts (exclusive of GST) of an unincorporated association for the financial year 2022-23 :

1. Collections from members for medical camp Rs. 12 lakhs.
2. Collections from 100 members @ Rs. 8,000 per month per members for maintenance of residential complex.
3. Collections from 80 members @ Rs. 7,500 per month per members in a commercial complex for maintenance of commercial complex.

**Answer :**

Sl.	Particulars	Amount
1.	Collection from members for medical camp (since medical services are exempt, hence medical camp by such association is also exempt)	Exempt
2.	Collection from 100 members @ Rs. 8,000 per month per members for maintenance of a residential complex [since amount upto Rs. 7,500 per month per member is exempt. Hence, entire Rs. 8,000 per month per member is taxable] (100 members x Rs. 8,000 x 12 months) [Circular No. 109/28/2019 - GST, dated 22.07.2019]	96,00,000
3.	Collections from 80 members @ Rs. 7,500 per month per member in a commercial complex (since, it is a case of 'Commercial Complex'. Hence, exemption is not available. GST liability shall arise) (Rs. 7,500 x 12 month x 80 members)	72,00,000
<b>Taxable Value</b>		<b>1,68,00,000</b>

8. Services by an **intermediary of financial services located in a multi services SEZ** with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).

**Explanation.** - For the purposes of this entry, the intermediary of financial services in IFSC is a person,-

- (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or
- (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or
- (iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or
- (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.



(xia)*	every person supplying online money gaming from a place outside India to a person in India; and
(xii)	such other person or class of persons as may be notified by the Government on the recommendations of the Council.

## **ANALYTICAL VIEW OF THE TOPIC**

### **Notes :**

- (1) \*Note: The provisions relating to Input Service Distributor, OIDAR services and online money gaming will be discussed in detail at the Final Level.
- (2) In exercise of the powers conferred by Sec. 20 of IGST Act read with Sec. 23(2) of the CGST Act, the Central Government, on the recommendation of the council, has exempted the persons making inter-state supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding Rs. 20 lakhs in a financial year from obtaining registration under GST Act. [Aggregate turnover limit is Rs. 10 lakhs, in case of Manipur, Mizoram, Nagaland and Tripura.]

**Example:** Dhola & Co., located in Delhi, is engaged in supply of taxable goods in the neighbouring States of Punjab and Haryana. Its aggregate turnover in current FY is ₹ 10 lakh. Since it is engaged in making inter-State taxable supply of goods, it is required to register mandatorily under GST irrespective of its aggregate turnover.

However, if in the above case, Dhola & Co. is engaged in inter- State supply of taxable services instead of goods, it will be eligible for exemption from registration till its aggregate turnover does not exceed ₹ 20 lakh.

- (3) **Exemption from obtaining compulsory registration to supplier of services supplying services through an ECO, if such service provider is having aggregate turnover upto Rs. 20 Lakhs in a financial year:**

Persons making supplies of services through an ECO who is required to collect TCS u/s 52, and having an aggregate turnover upto Rs. 20 lakhs in a financial year are exempted from obtaining registration under GST. [Aggregate turnover limit is Rs. 10 lakhs in the States of Manipur, Mizoram, Nagaland and Tripura.]

- (4) **Exemption from obtaining compulsory registration to supplier of goods supplying goods through an ECO, if such supplier is having aggregate turnover upto Rs. 20 Lakhs in the preceding & current financial year:**

Persons making supplies of goods through an ECO who is required to collect TCS u/s 52, and having an aggregate turnover upto Rs. 20 lakhs in the preceding & current financial year, are exempted from obtaining registration under GST. [Aggregate turnover limit is Rs. 10 lakhs in the States of Manipur, Mizoram, Nagaland and Tripura.] But, this exemption is subject to the following conditions, namely :

- (i) Such persons shall not make any inter-State supply of goods;
- (ii) Such persons shall not make supply of goods through ECO in more than one State or Union territory;



- (iii) Such persons shall be required to have a Permanent Account Number (PAN) issued under the Income Tax Act, 1961;
  - (iv) Such persons shall, before making any supply of goods through ECO, declare on the common portal their PAN, address of their place of business and the State or Union territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;
  - (v) Such persons have been granted an enrolment number on the common portal on successful validation of the PAN declared as per clause (iv);
  - (vi) Such persons shall not be granted more than one enrolment number in a State or Union territory;
  - (vii) No supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal; and
  - (viii) Where such persons are subsequently granted registration u/s 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.
- (5) Casual Taxable Persons and other Persons making inter-State taxable supplies of notified handicraft goods up to ₹ 20,00,000 Exempted from obtaining Registration:**

As we have seen that as per section 24, a person making inter-State supplies of goods is liable to be registered compulsorily under GST irrespective of the threshold limit.

However, Casual Taxable Persons and other persons making inter-state supplies of following goods have been exempted from obtaining registration :

- (a) Notified handicraft goods.
- (b) Other notified products\*, when made by craftsmen predominantly by hand even though some machinery may also be used in the process.

**Conditions to be fulfilled:**

1. The aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of Rs. 20 lakh [Rs. 10 lakh in case of Mizoram, Tripura, Manipur and Nagaland] in a FY.
2. Such persons have obtained a PAN and have generated an e-way bill.

\*Some of the notified products are leather articles, carved wood products, wood turning and lacquer ware, bamboo products, textiles hand printing, theatre costumes, musical instruments, dolls and toys, etc. These examples are only for the purpose of knowledge and are not relevant for examination purpose.

**Example:** Ariza Pvt. Ltd., located in Madhya Pradesh, is a supplier of taxable and notified handicraft goods. It supplies these goods in the neighbouring States of Uttar Pradesh and Orissa. Its aggregate turnover in the month of April is Rs. 15 lakh. Although Ariza Pvt. Ltd. is engaged in making inter-State supplies of taxable goods, it is not liable to obtain registration till its aggregate turnover does not exceed Rs. 20 lakh as it has availed the exemption from registration under Notification No. 03/2018 IT.

**CONCEPT OF TAXABLE PERSON**

Taxable person means a person who is registered or liable to be registered u/s 22 or 24.



- (a) A person who has obtained/is required to obtain more than one registration, whether in one State/ Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons**.
- (b) Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as **establishments of distinct persons**.

**Example :** Mr. Harshit Garg, a consultant, has a registered head office in Rajasthan. He has also obtained registration in the State of Gujarat in respect of his newly opened branch office. Mr. Harshit Garg, shall be treated as distinct persons in respect of registrations in Rajasthan and Gujarat.

- 4. Procedure for registration [Section 25 read with rules 8, 9 & 10] :** Under GST, the application for registration has to be submitted electronically on the GST Common Portal ([www.gst.gov.in](http://www.gst.gov.in)), duly signed or verified through Electronic Verification Code (EVC) [Aadhar OTP].

Such persons shall apply for registration in Form GST REG 01. The application for registration in GST Form REG 01 is divided into two parts – Part A and Part B.

However, this procedure will not apply to:

- Non-resident taxable person
- A person required to deduct tax at source u/s 51
- A person required to collect tax at source u/s 52
- 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 IGST Act **or a person supplying online money gaming from a place outside India to a person in India referred to in section 14A of IGST Act.**

Thus, normal procedure for registration is also applicable to a person paying tax under composition levy, person seeking voluntary registration as well as a casual taxable person.

- 5. PAN must for obtaining registration [Section 25(6) & (7)] :**

- A Permanent Account Number (PAN) is mandatory to be eligible for grant of registration.
- A Non-Resident Taxable Person (NRTP) may be granted registration on the basis of other prescribed documents (Valid Passport Number or Tax Identification Number issued by Govt. of his/its Country).
- A person who is required to deduct TDS u/s 51 of CGST Act, may be granted registration on the basis of a Tax Deduction and Collection Account Number issued under Income Tax Act, instead of PAN.

- 6. Registration under composition levy :**

- Normal procedure for registration (as applicable for normal taxpayer) is also applicable in case of composition taxpayer.
- If one of the POB of a taxable person is paying tax under normal levy [Section 9], no other POB shall be granted registration to pay tax under composition levy [Section 10].



(d) Rule 17(1A): The Unique Identity Number granted to such person shall be applicable to the territory of India.

#### 10. Application for registration by Special Economic Zone (SEZ) :

- A person having a unit in a SEZ or being a SEZ developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.
- Thus, there may be a case where two units of a tax payer are located in same State - one in SEZ and another outside SEZ. Separate registrations have to be obtained for each of the two units as separate business vertical.



### Procedure for Registration

Every Person liable to get registered and person seeking voluntary registration shall, before applying for registration, declare his Permanent Account Number (PAN), State/UT in **Part A** of **FORM GST REG-01** on GST Common Portal ([www.gst.gov.in](http://www.gst.gov.in)).

The PAN shall be validated online by the common portal from the CBDT database and shall also be verified through separate OTPs sent to the mobile number and e-mail address linked to the PAN.

Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.

Using TRN, applicant shall electronically submit application in **Part B** of application form, along with specified documents at the Common Portal.

**Rule 8 (4A):** Where an applicant opts for authentication of Aadhaar number, he shall, while submitting the application, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or 15 days from the submission of the application in Part B of FORM GST REG-01.

Further, if the applicant is applying for GST registration in the State of Gujarat or Puducherry, then, the following additional procedure needs to be followed by the applicant:

Every registration application made by a person, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso.



- (b) (i) Bank passbook with photograph; or  
 (ii) Voter identity card issued by the Election Commission of India; or  
 (iii) Passport; or  
 (iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988:

Further, such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.

#### Physical verification of business premises in certain cases [Rule 25]:

- (1) Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded on the common portal within a period of 15 working days following the date of such verification.
- (2) Where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to sub-rule (1) of rule 9, the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded on the common portal at least 5 working days prior to the completion of the time period specified in the said proviso.

#### How Aadhaar Authentication is done?

Once registration application is submitted, GST system sends "link" to the concerned persons at their GST registered mobile numbers and email ids mentioned in the GST application, for the Aadhaar Authentication.

On clicking the verification link, a window for Aadhaar Authentication will open where they have to enter Aadhaar Number and the OTP received by them on the mobile number linked with Aadhaar.

Taxpayers need to complete Aadhaar Authentication of all Promoters/ Partners/ Authorized Signatories/ Karta, etc. as mentioned in the application to avail this option.

On successful authentication, demographic data of the persons is fetched from Aadhaar to GST System.

**Issuance of registration certificate [Rule 10] :** Where the application for grant of registration has been approved, a certificate of registration [duly signed or verified through EVC by the proper officer] in FORM GST REG-06 showing the principal place of business (PPoB) and additional place(s) of business (APoB) is made available to the applicant on the Common Portal and a Goods and Services Tax Identification Number (hereinafter referred to as "GSTIN") i.e. the GST registration no. is communicated to applicant, within 3 days after the grant of registration.

#### 15 Digit GSTIN Format

State Code	PAN										Entity Code	Check sum character		



**Display of registration certificate and GSTIN on the name board [Rule 18] :** Every registered person shall display his registration certificate in a prominent location at his PPOB and at every APoB. Further, his GSTIN also has to be displayed on the name board exhibited at the entry of his PPOB and at every APoB.

**12. Effective date of registration [Rule 10]:**

Where an applicant submits application for registration	Effective date of registration is
within 30 days from the date he becomes liable to registration	the date on which he becomes liable to registration
after 30 days from the date he becomes liable to registration	date of grant of registration

**Example:** Mangal Industries Ltd. is engaged in taxable supply of services in Jharkhand. The turnover of Mangal Industries Ltd. exceeded Rs. 20 lakh on 1<sup>st</sup> January. It is liable to get registered by 31<sup>st</sup> January [30 days] in the State of Jharkhand. It applies for registration on 20<sup>th</sup> January and is granted registration certificate on 2<sup>nd</sup> February. The effective date of registration of Mangal Industries Ltd. is 1<sup>st</sup> January.

**Example:** In above example, if Mangal Industries Ltd. applies for registration on 5<sup>th</sup> February and is granted registration certificate on 14<sup>th</sup> February. The effective date of registration of Mangal Industries Ltd. will be 14<sup>th</sup> February.

**13. Furnishing of Bank Account Details [Rule 10A] –** After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a GSTIN has been assigned, the registered person shall furnish information with respect to details of bank account on the common portal

- within 30 days from the date of grant of registration, or
- before furnishing the details of outward supplies in FORM GSTR-1 or using invoice furnishing facility,

whichever is earlier.

However, this rule does not apply to the following persons:

- (i) Persons who have been granted registration under rule 12 (TDS/TCS);
- (ii) Persons who have been granted registration under rule 16 (Compulsory / Suo-Motu Registration by Proper officer).

**Analysis :** While applying for registration on GST portal, a person is required to furnish the details of his bank account. This requirement has been relaxed to a limited extent, by inserting a new rule 10A to the CGST Rules. In pursuance to the same, the registered person is allowed to furnish information with respect to details of bank account on the common portal within 30 days from the date of grant of registration, or before furnishing the details of outward supplies in FORM GSTR-1 or using invoice furnishing facility, whichever is earlier.



- He is required to furnish in the application the details of inputs held in stock or inputs contained in semi-finished/finished goods held in **stock** and of capital goods held in stock on the date from which cancellation of registration is sought, liability thereon, details of the payment, if any, made against such liability and may furnish relevant documents thereof.
- **Where a person who has submitted an application for cancellation of his registration** is no longer liable to be registered, proper officer shall issue the **order** of cancellation of registration **within 30 days** from the date of submission of application for cancellation.
- **Rule 22(1) : Where the proper officer cancels the registration suo-motu**, he shall not cancel the same without giving a **show cause notice [SCN]** and without giving a reasonable opportunity of being heard, to the registered person. The **reply** to SCN has to be submitted **within 7 days** of service of notice.
- If reply to the SCN furnished u/s 22(2) or in response to the notice issued u/s 21A(2A) is **satisfactory** proper officer shall **drop the proceedings** and pass an order. Where registration of a person is liable to be cancelled, proper officer shall issue the order **of cancellation** of registration within 30 days **from** the date of **reply** to SCN issued u/s 22(1) or u/s 21A(2A).
- However, where the person, **instead of replying** to the notice, **furnishes all the pending returns** and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall **drop the proceedings** and pass an order.
- **Rule 21A. Suspension of registration :**
  - (1) **Period of Suspension:** Where a registered person has applied for cancellation of registration, 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) **Suspension by Department:** Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he may, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration.
    - (2A) **Analysis by Department leading to Suspension:** Where,
      - (a) a comparison of the returns (i.e. GSTR – 3B) furnished by a registered person with
        - i. the details of outward supplies furnished in FORM GSTR-1; or
        - ii. the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,or such other analysis, as may be carried out on the recommendations of the Council, show that there are **significant differences or anomalies** indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, or
      - (b) **there is a contravention of the provisions of rule 10A by the registered person**,his registration shall be **suspended** and the said person shall be intimated electronically, on the common portal, or by sending a communication to his e-mail address, highlighting the



said differences, anomalies or non-compliances and asking him to **explain**, within a period of **30 days**, as to why his registration shall not be cancelled.

- (3) **No Taxable Supply/Return during Suspension:** A registered person, whose registration has been suspended, shall not make any taxable supply during the period of suspension and shall not be required to furnish any return.

**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.

- (3A) **No Refund during Suspension:** A registered person, whose registration has been suspended, shall not be granted any refund u/s 54, during the period of suspension of his registration.
- (4) **Revocation of Suspension:** The suspension of registration shall be deemed to be revoked upon completion of the proceedings by the proper officer and such revocation shall be effective from the date on which the suspension had come into effect.

However, the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

Further, where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in section 29(2) clause (b) or clause (c) (i.e. due to non-furnishing of returns by regular or composition taxpayer for prescribed tax periods) and the registration has not already been cancelled by the proper officer, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

Further, where the registration has been suspended under sub-rule (2A) for contravention of provisions of rule 10A and the registration has not already been cancelled by the proper officer u/r 22, the suspension of registration shall be deemed to be revoked upon compliance with the provisions of rule 10A.

- (5) **Tax Invoice>Returns after Revocation of Suspension:** Where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) [i.e. **Revised Tax Invoice**] and section 40 [i.e. **First Return**] in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.
- The cancellation of registration shall be effective from a date to be determined by the proper officer. He will direct the taxable person to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5) [as discussed in the next para].

### 3. Reversal of credit [Section 29(5) & (6)] [also discussed in Chapter 5, Topic 5.6] :

- A registered person whose registration is cancelled will have to debit the electronic credit or cash ledger by an amount equal to

- (1) **input tax credit (ITC)** in respect of :

- stock of inputs and inputs contained in semi-finished/finished goods stock and
- capital goods or plant and machinery on the day immediately preceding the date of cancellation,

or

Reversal krna pdega 😊





- (1) **Application** : Where the registration of a person is cancelled suo-motu by the proper officer, such registered person, subject to the provisions of rule 10B, may apply for revocation of the cancellation of registration to such proper officer, **within 90 days** from the date of service of the order of cancellation of registration, at the GST Common Portal in the prescribed manner.

However, the Commissioner or an authorised officer, may extend this period of 90 days by a further period upto 180 days (i.e. 90 + 180 days), on sufficient cause being shown by the applicant after recorded the reasons in writing.

- (2) **Returns/Tax Payment**: However, in case registration was cancelled for failure of registered person to furnish returns, **before applying for revocation** the person has to **rectify the defaults** (by filing all pending returns, making payment of all dues in terms of such returns alongwith interest, penalty, late fee, etc.) for which the registration was cancelled by the officer.
- (3) **Revocation on Application**: If the proper officer is satisfied that there are sufficient grounds for revocation of cancellation, he may revoke the cancellation of registration, by an order **within 30 days** of receipt of application and communicate the same to applicant.
- (4) **Notice**: Otherwise, he may reject the revocation application. However, before rejecting the application, he has to first issue Show Cause Notice (**SCN**) to the applicant who shall furnish the clarification **within 7 working days** of service of SCN. The proper officer shall dispose the application (accept/reject the same) **within 30 days** of receipt of clarification.
- (5) **Deemed Revocation**: The revocation of cancellation of registration under the SGST Act/ UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under CGST Act.
- (6) **Returns after Revocation**: In case of Revocation of cancellation, 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.

**Example**: The registration of Naman Associates was cancelled by the proper officer by an order dated 1<sup>st</sup> June for its failure to furnish returns. The registration was cancelled with effect from 1<sup>st</sup> January itself. It applied for revocation of cancellation of registration and the order for revocation of cancellation of Naman Associates is passed on 31<sup>st</sup> July. In this case, Naman Associates shall be required to furnish all the returns for the period from 1<sup>st</sup> January to 31<sup>st</sup> July within a period of 30 days from 31<sup>st</sup> July, i.e. by 30<sup>th</sup> August.

**Note:**

- UIN Holders (i.e. UN Bodies, Embassies and Other Notified Persons), GST Practitioner cannot apply for revocation of cancelled registration.
- In case the registration is cancelled on the request of the taxpayer or his legal heir, one cannot apply for revocation of cancelled registration.
- The revocation of cancellation of registration under the SGST Act/ UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under CGST Act.



Supplies

9(5) by all registered persons through ECO]

to suppliers

Further, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than GST and GST Cess, if charged separately by the supplier.

**Deposit of TCS by ECO to Government :** The TCS amount collected by the ECO has to be remitted to the Government within 10 days after the end of the month.

**Example:** If the TCS has been collected in the month of December, the amount has to be remitted into the government on or before 10<sup>th</sup> January.

**Illustration 1 :** Mr. X is a supplier selling his own products through a web site hosted by him. Does he fall under the definition of an “electronic commerce operator”? Whether he is required to collect TCS on such supplies?

**Answer :** As per the definitions given in GST law, Mr. X will come under the definition of an “electronic commerce operator”. However, according to Section 52, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In cases, where someone is selling their own products through their own website, there is no requirement to collect tax at source as per the provisions of this Section. These transactions will be liable to GST at the prevailing rates.

**Illustration 2 :** If Mr. A purchase goods from different vendors and in turn Mr. A, is selling them on his own website under his own billing, Is TCS required to be collected on such supplies?

**Answer :** No. According to Section 52, TCS is required to be collected on the net value of taxable supplies made through E-commerce operator by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - Mr. A purchase the goods from the vendors, and those goods are sold through his own website. For the first transaction, GST is leviable, and will need to be paid to vendor, on which ITC shall be available to Mr. A. The second transaction is a supply on own account of Mr. A, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

### Filing of Monthly & Annual Statement by ECO

- An electronic statement [in Form GSTR - 8] has to be filed by ECO containing details of the outward supplies of the goods/or services effected through it, including the supplies returned through it and the amount collected by it as TCS during the month within 10 days after the end of each month in which supplies are made.
- Additionally, the ECO is also mandated to file an Annual Statement [in Form GSTR - 9B] on or before 31<sup>st</sup> day of December following the end of financial year.
- The Commissioner has been empowered to extend the due date for furnishing of monthly and annual statement by the person collecting tax at source.
- Further, the ECO shall not be allowed to furnish GSTR - 8 after the expiry of a period of 3 years from the due date of furnishing the said statement, except where the Government allows.
- **Rectification of errors/omissions in GSTR-8 :** If after submission of GSTR-8, the ECO discovers any discrepancy therein on his own [not being the result of any scrutiny, audit, inspection or



enforcement proceedings] it should rectify such discrepancy in GSTR-8 to be filed for the month during which such discrepancy is noticed, subject to payment of interest u/s 50.

The rectification is not allowed after 30<sup>th</sup> November following the end of the financial year or the actual date of filing of the relevant annual statement [GSTR-9B], whichever is earlier.

### Claim of TCS amount by the supplier

The registered supplier who has supplied the goods or services or both through the e-commerce operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in TCS Statement furnished in Form GSTR-8 by such operator.

### Notice to Operator

- An officer not below the rank of deputy commissioner can issue notice to an operator, asking him to furnish detail relating to volume of the goods/services supplied, stock of the goods lying in the warehouse/godowns, etc.
- The operator is required to furnish such details within 15 working days.
- In case an operator fails to furnish the information, besides being liable for penal action u/s 122, it shall also be liable for penalty up to Rs. 25,000 (CGST).

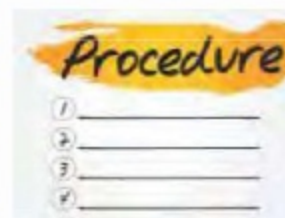


### Other Key Points Relating to Registration under GST

- Section 24(x) of CGST Act, 2017 makes it mandatory for every e-commerce operator who is required to collect tax at source to get registered under GST. The threshold limit of Rs. 20 lakhs (Rs. 10 lakhs for special category states) is not applicable to them.
- Further, section 24(ix) of the CGST Act, 2017 makes it mandatory for every person who supplies goods or services through such operator to get registered under GST.
- However, service suppliers supplying services through such ECOs have been exempted from registration until their turnover crosses threshold limit for registration.
- Similarly, suppliers supplying goods through such ECOs have also been exempted from registration until their turnover crosses threshold limit for registration in the preceding and current financial year, subject to fulfillment of certain specified conditions.

**Procedure of Registration by ECO:** Any person required to deduct tax in accordance with the provisions of section 52 shall electronically submit a registration application through the common portal. The proper officer shall, after due verification, grant registration within 3 working days from the date of the application.

Also, on a request or upon an enquiry or pursuant to any other proceeding under the Act, if the proper officer is satisfied that a person is no longer liable to collect TCS u/s 52, then, the said officer may cancel the said registration.



### Special procedure to be followed by ECO in respect of supply of goods made through it by the persons exempted from obtaining registration (hereinafter referred to as the said person)

- (i) the ECO shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;



- (ii) the ECO shall not allow any inter-State supply of goods through it by the said person;
- (iii) the ECO shall not collect TCS u/s 52(1) in respect of supply of goods made through it by the said person; and
- (iv) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

Further, where multiple ECOs are involved in a single supply of goods through ECO platform, "the ECO" shall mean the ECO who finally releases the payment to the said person for the said supply made by the said person through him.

Special procedure to be followed by ECO in respect of supply of goods made through it by the persons opted for Composition Scheme (hereinafter referred to as the said person)

- (i) the ECO shall not allow any inter-State supply of goods through it by the said person;
- (ii) the ECO shall collect TCS u/s 52(1) in respect of supply of goods made through it by the said person and pay to the Government as per provisions of 52(3); and
- (iii) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

#### **Clarification regarding GST on Services Supplied by Restaurants through E-Commerce Operators [Circular]**

Sl.	Issue	Clarification
1.	Would ECOs have to still collect TCS u/s 52 ?	As 'restaurant service' has been notified u/s 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided w.e.f. 01.01.2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS.  On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will pay TCS in terms of section 52.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified u/s 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered under GST (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service u/s 9(5).
3.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in



		the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
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Clarification on TCS liability in case of multiple E-commerce Operators in one transaction, in the context of Open Network for Digital Commerce (ONDC) [Circular]

1. In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS u/s 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.
2. In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO.

**Issue:** Which ECO should deduct TCS and make other compliances u/s 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Sec. 2(45) of the CGST Act.

**Case 1:** In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances u/s 52 including collection of TCS?



**Clarification:** In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances u/s 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, pay the same to the Government and also make other compliances u/s 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with sec. 52 of CGST Act with respect to this particular supply.

**Case 2:** In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances u/s 52 including collection of TCS?





Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec. 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, pay the same to the Government and also make other compliances u/s 52 of CGST Act.

**CA means**

**Challenge it, Achieve it, Loop it.**

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- The payment of interest in case of belated payment of tax should be made voluntarily i.e. even without a demand.
- The interest payable under this section shall be debited to the Electronic Liability Register.
- The liability for interest can be settled by adjustment with balance in Electronic Cash Ledger **but not with balance in electronic credit ledger.**

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Clarification on charging of interest in cases of wrong availment of IGST credit and reversal thereof [Circular No. 192/04/2023 – GST, dated 17.07.2023]

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Issue: Clarification regarding charging of interest u/s 50(3) of the CGST Act in the cases where IGST credit has been wrongly availed by a registered person. Clarification is being sought as to whether such wrongly availed IGST credit would be considered to have been utilized for the purpose of charging of interest u/s 50(3) of CGST Act, read with rule 88B of CGST Rules, in cases where though the available balance of IGST credit in the electronic credit ledger of the said registered person falls below the amount of such wrongly availed IGST credit, the total balance of input tax credit in the electronic credit ledger of the registered person under the heads of IGST, CGST and SGST taken together remains more than such wrongly availed IGST credit, at all times, till the time of reversal of the said wrongly availed IGST credit.

Case 1: In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.

Clarification: Since, the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest u/r 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit.

Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability u/s 50(3) of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest.



**Case 2:** Whether the credit of compensation cess available in electronic credit ledger shall be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest u/r 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

**Clarification:** As per proviso to section 11 of GST (Compensation to States) Act, 2017, input tax credit in respect of compensation cess on supply of goods and services leviable under section 8 of the said Act can be utilised only towards payment of compensation cess leviable on supply of goods and services. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads.

Accordingly, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest u/r 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

**Illustration 4 :** Mr. Alok, a registered supplier of taxable goods, filed GSTR-3B for the month of January, 2021 on 15<sup>th</sup> April, 2021. The prescribed due date to file the said GSTR-3B was 20<sup>th</sup> February, 2021. The amount of net GST payable, in Cash i.e. Electronic Cash Ledger on supplies made by him for the said month worked out to be Rs. 36,500 which was paid on 15<sup>th</sup> April, 2021. Briefly explain the related provisions and compute the amount of interest payable under the CGST Act, 2017 by Mr. Alok.

**Solution :** Interest is payable in case of delayed payment of tax @ 18% per annum from the date following the due date of payment to the actual date of payment of tax.

Thus, the amount of interest payable by Mr. Alok is as under:

Period of delay = 21<sup>st</sup> February, 2021 to 15<sup>th</sup> April, 2021 = 54 days

Hence, amount of interest =  $36,500 \times 18\% \times 54/365 = \text{Rs. } 972$

**Illustration 5 :** M/s ABC Ltd., have filed their GSTR-3B for the month of July, 2021 within the due date prescribed under Section 39 i.e. 20.08.2021. Post filing of the return, the registered person has noticed during September, 2021 that tax dues for the month of July, 2021 have been short paid for Rs. 40,000. M/s ABC Ltd., has paid the above shortfall of Rs. 40,000, through GSTR-3B of September 2021, filed on 20.10.2021 [payment through Cash ledger - Rs. 30,000 and Credit ledger Rs. 10,000]. Examine the Interest payable under the CGST Act, 2017.

What would be your answer if, GSTR-3B for the month of July 2021 has been filed belatedly on 20.10.2021 and the self-assessed tax of Rs. 40,000/- has been paid on 20.10.2021 [payment through electronic cash ledger - Rs. 30,000 and electronic credit ledger - Rs. 10,000].

**Notes:**

- There exists adequate balance in Electronic Cash & Credit ledger as on 31.07.2021 for the above short fall.
- No other supply has been made nor tax payable for the month of July, 2021 other than ₹ 40,000/- missed out to be paid on forward charge basis.

**Solution :** Interest is payable under Section 50 of the CGST Act, 2017 in case of delayed payment of tax @ 18% per annum from the date following the due date of payment to the actual date of payment of tax.



whichever is earlier.

4. **Particulars of a tax invoice [Sections 31(1) & (2) read with rule 46]** : As discussed earlier, there is no format prescribed for an invoice, but rules make it mandatory for an invoice to have the following fields (only applicable fields are to be filled) :

(a)	Name, address and GSTIN of the supplier;	
(b)	A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets numerals/special characters hyphen or dash and slash, and any combination thereof, unique for a F.Y.;	
(c)	Date of its issue;	
(d)	<b>If recipient is registered</b> – Name, address and GSTIN or UIN of recipient	
(e)	<b>If recipient is unregistered and value of supply is</b>	<b>Particulars of invoice</b>
	Rs. 50,000 or more	Name and address of the recipient and the address of delivery, along with the name of State and its code
	less than Rs. 50,000	unregistered recipient may still request the aforesaid details to be recorded in the tax invoice
	However, in cases involving supply of online money gaming or in cases where any taxable service is supplied by or through an ECO or by a supplier of OIDAR services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient.	
(f)	HSN code for goods or services;	
(g)	Description of goods or services;	
(h)	Quantity in case of goods and unit or Unique Quantity Code thereof;	
(i)	Total value of supply of goods or services or both;	
(j)	Taxable value of supply of goods or services or both taking into account discount or abatement, if any;	
(k)	Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);	
(l)	Amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);	
(m)	Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;	
(n)	Address of delivery where the same is different from the place of supply;	
(o)	Whether the tax is payable on reverse charge basis;	
(p)	Signature or digital signature of the supplier or his authorized representative; and However, the signature or digital signature of the supplier or his authorized representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions	



- (i) signature or digital signature of the supplier or his authorised representative.

**Note :** Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130\* shall prominently contain the words **"INPUT TAX CREDIT NOT ADMISSIBLE"**.

\*Section 74, 129 & 130 will be discussed at CA Final Level. These sections prescribe the provisions relating to tax paid as a result of evasion of taxes or upon detention of goods in transit, or towards redemption of confiscated goods/conveyances.

**Illustration 6 :** Kartik & Co., a registered supplier under GST, provides the following information regarding various tax invoices issued by it during the month of March:

- (i) Value of supply charged in invoice no. 1 was ₹ 2,50,000 against the actual taxable value of ₹ 2,30,000.
- (ii) Tax charged in invoice no. 4 was ₹ 32,000 against the actual tax liability of ₹ 68,000 due to wrong HSN code being chosen while issuing invoice.
- (iii) Value charged in invoice no. 8 was ₹ 3,20,000 as against the actual value of ₹ 4,20,000 due to wrong quantity considered while billing.

Kartik & Co. asks you to answer the following:

- (1) Who shall issue a debit/credit note under CGST Act?
- (2) Whether debit note or credit note has to be issued in each of the above circumstances?
- (3) What is the maximum time-limit available for declaring the credit note in the GST Return?

**Answer**

- (1) The debit/credit note shall be issued by the registered person who has supplied the goods and/or services, i.e. Kartik & Co.
- (2) Yes, debit/credit note need to be issued in each of the circumstances as under:
  - (i) A credit note is required to be issued as the taxable value in invoice no. 1 exceeds the actual taxable value.
  - (ii) A debit note is required to be issued as the tax charged in the invoice no. 4 is less than the actual tax payable.
  - (iii) A debit note is required to be issued as the value of supply charged in the invoice no. 8 is less than the actual value.
- (3) The details of the credit note cannot be declared later than 30<sup>th</sup> November following the end of the financial year in which such supply was made or the date of furnishing of the relevant annual return, whichever is earlier.

### **13.4 E - invoice through Govt. notified website [Sub-rule (4), (5) & (6) of Rule 48] :**

As per Rule 48(4) of the CGST Rules, the registered person whose aggregate turnover in any preceding financial year from 2017-18 onwards **exceeds Rs. 5 crores**, shall, in respect of supply of goods or



- **Example:** Maharaja Private Limited has an SEZ unit and a regular DTA unit (both having same PAN). The aggregate total turnover of Maharaja Private Limited is more than Rs. 5 crores (considering both the GSTINs). However, the turnover of DTA unit is below Rs. 5 crores for FY 2021-22. In this scenario, SEZ unit is exempt from e-invoicing. However, e-invoicing will be applicable to DTA Unit because the aggregate turnover of the legal entity in this case is > Rs. 5 crores. The eligibility is based on aggregate annual turnover on the common PAN.

#### Clarification on applicability of e-invoicing w.r.t an entity [Circular]

**Issue:** Whether the exemption from mandatory generation of e-invoices is available for the entity as whole, or whether the same is available only in respect of certain Supplies made by the said entity?

**Clarification:** Certain entities/sectors have been exempted from mandatory generation of e-invoices as per rule 48(4). It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

**Illustration:** A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

#### Clarification on applicability of e-invoice w.r.t supplies made to TDS deductors [Circular]

**Issue:** Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments / Government agencies / local authorities / PSUs which are registered solely for the purpose of deduction of TDS as per provisions of sec. 51 of the CGST Act?

**Clarification:** Government Departments or establishments / Government agencies / local authorities / PSUs, etc. registered solely for the purpose of deduction of TDS under GST, are to be treated as registered persons under the GST law as per provisions of sec. 2(94) of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/Government agencies/ local authorities/ PSUs, etc u/r 48(4) of CGST Rules.

### 13.5 Tax invoice to have Dynamic Quick Response (QR) code

The Government has notified that an invoice issued by a registered person, whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 500 crores, to an unregistered person (i.e. B2C invoice), shall have Dynamic Quick Response (QR) code.

However, this provision is not applicable to the following persons:

- (i) Insurer, Banking Company, financial institution including a NBFC;
- (ii) Goods Transport Agency;
- (iii) Passenger Transport Service Supplier;
- (iv) Supplier of services by way of admission or exhibition of cinematograph films in multiplex screens;



## 14.3 Furnishing Details of Outward Supplies [Section 37]

1. **Bar on filing of GSTR-1 or using IFF [Rule 59(6)]** : Notwithstanding anything contained in this rule, a registered person shall not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, if –
  - (i) he has not furnished the return in FORM GSTR-3B for the preceding month;
  - (ii) he has not furnished the return in FORM GSTR-3B for preceding quarter (in case where a registered person is required to furnish return on quarterly basis);
  - (iii) he has neither deposited the amount specified in the intimation issued u/r 88C(1) nor has furnished a reply explaining the reasons for any amount remaining unpaid;
  - (iv) he has neither paid the amount equal to the excess ITC as specified in the intimation issued u/r 88D(1) nor has furnished a reply explaining the reasons in respect of the amount of excess ITC that still remains to be paid;
  - (v) he has not furnished the details of the bank account as per the provisions of rule 10A.
2. **What kind of details of outward supplies are required to be furnished in GSTR-1 ?**



S. N.	Invoice-wise Details of ALL	Consolidated Details of ALL	Debit and Credit Notes
(i)	Inter-State and Intra-State supplies made to registered persons.	Intra-State supplies made to unregistered persons for each rate of tax.	Issued during the month for invoices issued previously
(ii)	Inter-State supplies with invoice value exceeding Rs. 2,50,000 made to Unregistered persons	State-wise Inter-State supplies with invoice value upto Rs. 2,50,000 made to unregistered persons for each rate of tax	

**Note** : Scanned copies of invoices are not required to be uploaded. Only certain prescribed fields of information from invoices need to be furnished e.g., invoice no., date, value, HSN code, taxable value, rate of tax, amount of tax etc.

3. **Communication of details of GSTR-1, etc. to the recipient of supply [Rule 60]** : The details of documents (invoices, etc.) furnished in Form GSTR-1/IFF/GSTR-5 and the details of the TDS/TCS furnished in Form GSTR-7/GSTR-8, shall be made available electronically (auto populated) to the respective recipient(s) in Form GSTR-2A, GSTR-2B or Form GSTR-4A (Composition taxpayer) through the common portal.
4. **FORM GSTR-2B [Section 38 read with Rule 60 (7) & (8)]** : An auto-generated statement containing the details of ITC shall be made available to the registered person in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of –
  - (i) the details of outward supplies furnished by his supplier (other than a supplier who has opted for QRMP Scheme) in form GSTR – 1, between 12<sup>th</sup> of the previous month to the 11<sup>th</sup> of the current month;
  - (ii) the details of invoices furnished by a NRTP in FORM GSTR- 5 and details of outward supplies furnished by his supplier (who has opted for QRMP Scheme) in FORM GSTR-1 or using the IFF, –



#### 10. What are the precautions that a taxpayer is required to take for a hassle-free compliance under GST?

One of the most important things under GST is the timely furnishing of the details of outward supplies in GSTR-1. How best this can be ensured will depend on the number of B2B invoices that the taxpayer issues. If the number is small, the taxpayer can furnish all the information in one go. However, if the number of invoices is large, the invoices (or debit/ credit notes) should be furnished on a regular basis.

#### 11. Regular furnishing of invoices:

GST common portal allows regular furnishing of invoices. Till the statement is actually submitted, the system also allows the taxpayer to modify the furnished invoices. Therefore, it would always be beneficial for the taxpayers to regularly furnish the invoices. Last minute rush makes furnishing difficult and comes with higher risk of possible failure and default.

#### 12. Notes:

- Furnishing of GSTR-1 for the current tax period is not allowed, if GSTR-1 for any of the previous tax periods has not been furnished except where the Government allows.
- Further, the registered person shall not be allowed to furnish GSTR - 1 for a tax period after the expiry of a period of 3 years from the due date of furnishing the said statement, except where the Government allows.
- A taxpayer cannot file GSTR-1 before the end of the current tax period. However, following are the exceptions to this rule:
  - (a) Casual taxpayers, after the closure of their business
  - (b) Cancellation of GSTIN of a normal taxpayer
- A taxpayer who has applied for cancellation of registration will be allowed to file GSTR-1 after confirming receipt of the application.
- All values like invoice value, taxable value and tax amounts in GSTR-1 are to be declared up to 2 decimal digits. The rounding off of the self-declared tax liability to the nearest rupee will be done in GSTR 3B.
- Taxpayer opting for voluntary cancellation of GSTIN will have to file GSTR-1 for active period.
- In cases where a taxpayer has been converted from a normal taxpayer to composition taxpayer, GSTR 1 will be available for filing only for the period during which the taxpayer was registered as normal taxpayer. The GSTR 1 for the said period, even if filed with delay would accept invoices for the period prior to conversion.

### 14.3 Furnishing of Returns [Sec. 39]

1. **GSTR-3B [Rule 61(5)]:** GSTR-3B is a simple return containing summary of outward and inward supplies liable to reverse charge, /eligible ITC, payment of tax etc. Thus, GSTR-3B does not require invoice-wise data of outward supplies.

**Payment of Tax :** The registered person will discharge his liability towards tax, interest, penalty, fees and other amounts by debiting electronic cash ledger and/or electronic credit ledger and



or

- Actual date of filing of the relevant annual return
6. **Nil GSTR-3B:** Filing of GSTR-3B is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period. For such tax period(s), a Nil GSTR-3B is required to be filed. A taxpayer may file Nil Form GSTR-3B, anytime on or after the 1<sup>st</sup> of the subsequent month for which the return is being filed for.
7. **Rule 67A :** A registered person who is required to furnish a Nil GSTR-3B or a Nil GSTR-1 or a Nil GST CMP-08 for a tax period, can furnish the same through an SMS using the registered mobile number and it shall be verified by a registered mobile number based One Time Password (OTP) facility.

**Explanation –** For the purpose of this rule, a Nil GSTR-3B or a Nil GSTR-1 or a Nil GST CMP-08 shall mean a GSTR-3B or a GSTR-1 or a GST CMP-08, for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B or FORM GSTR-1 or FORM GST CMP-08.

#### 8. Signing the Return while filing

- A taxpayer needs to electronically sign the submitted returns otherwise it will be considered not-filed.
  - Taxpayers can electronically sign their returns using a DSC, E-sign (Aadhaar-based OTP verification), or EVC (Electronic Verification Code sent to the registered mobile number and E-mail ID of the authorized signatory).
9. **Sec. 39(10):** A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies u/s 37(1) for the said tax period has not been furnished by him except where the Government allows.
10. **Sec. 39(11):** A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of 3 years from the due date of furnishing the said return, except where the Government allows.
11. **Rule 88C – Manner of dealing with difference in liability reported in FORM GSTR-1 and that reported in FORM GSTR-3B**
- (1) Where the tax payable by a registered person, in accordance with FORM GSTR-1 or IFF in respect of a tax period, exceeds the amount of tax payable by such person in accordance with GSTR-3B for that period by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference, electronically, directing him to either pay the differential tax liability, along with interest; or explain the aforesaid difference, within a period of 7 days.
- (2) Such registered person shall, either, pay the amount of the differential tax liability, along with interest or furnish a reply electronically, within a period of 7 days. Otherwise, such amount shall be recoverable in accordance with the provisions of section 79.
12. **Rule 88D – Manner of dealing with difference in ITC available in FORM GSTR-2B and that availed in FORM GSTR-3B**
- (1) Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in FORM GSTR-3B exceeds the ITC available to such person in accordance with FORM GSTR-2B in respect of the said tax period or periods, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference, electronically, directing him to,



either, pay the excess ITC availed along with interest, or explain the reasons for the aforesaid difference in ITC, within a period of 7 days.

- (2) Such registered person shall, either, pay the excess ITC along with interest or furnish a reply, electronically, within a period of 7 days. Otherwise, such amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74.

**Illustration 3 :** Ms. Pragma, a taxpayer registered under regular scheme, furnished GSTR-1 & GSTR-3B for the month of October. After furnishing the same, she discovers that the value of a taxable supply has been under-reported therein. Ms. Pragma now wants to file a revised GSTR-1 & GSTR-3B. Examine the scenario and give your comments.

**Answer :** Under GST law, a statement/return once filed cannot be revised. However, the details of those transactions that are required to be amended can be amended in any of the future GSTR-1s. For this purpose, specific tables are provided in GSTR-1 to amend previously declared details. Thus, Ms. Pragma cannot revise GSTR-1 & GSTR-3B filed by her for the month of October. However, she can amend the details of the taxable supply, which was under-reported, in GSTR-1 for the month of November. The tax payable on account of such error will be paid along with interest in GSTR-3B for the month of November.

## 14.4 Special Returns

### 1. Filing of Statements / Returns by Composition Supplier

- (a) **Auto-population of inward supplies:** The inward supplies of a composition supplier received from registered persons filing GSTR-1 will be auto populated in **FORM GSTR-4A**.
- (b) The return furnished in **FORM GSTR-4** shall include the -
  - (i) **invoice wise** inter-State and intra-State **inward** supplies received from registered and un-registered persons; and
  - (ii) **consolidated** details of **outward** supplies made.
- (c) **Statements/returns for the period prior to opting for composition scheme :** A registered person who has opted to pay tax under composition scheme (goods/services) from the beginning of a financial year shall, where required, furnish GSTR-1 & GSTR-3B relating to the period prior to opting for the composition scheme.
- (d) **Statements/returns for the period prior to exiting from composition scheme :** Such registered person shall furnish FORM GST CMP-08 for the period for which he has paid tax under the composition scheme till the 18<sup>th</sup> of month next to the relevant quarter and furnish a return in FORM GSTR-4 for the said period till the 30<sup>th</sup> day of April following the end of the relevant financial year during which such withdrawal falls.

2. **Details of inward supplies of persons having UIN [Rule 82] :** Such persons shall furnish the details of those inward supplies of taxable goods and/or services on which refund of taxes has been claimed in **Form GSTR-11, along with application for such refund claim**.

## 14.5 First Return [Sec. 40]

When a person becomes liable to registration after his turnover crossing the threshold limit for registration, he may apply for registration within 30 days of so becoming liable. Thus, there might be a time lag between a person becoming liable to registration and grant of registration certificate.

During the intervening period, such person might have made the outward supplies, i.e. after becoming liable to registration but before grant of the certificate of registration. Now, in order to enable such



registered person to declare the taxable supplies made by him for the period between the date on which he became liable to registration till the date on which registration has been granted so that ITC can be availed by the recipient on such supplies, firstly, the registered person may issue Revised Tax Invoices against the invoices already issued during said period within 1 month from the date of issuance of certificate of registration. Further, section 40 provides that registered person shall declare his outward supplies made during said period in the first return furnished by him after grant of registration.

## 14.6 Annual Return [Sec. 44 read with Rule 80]

### 1. Who are required to furnish Annual Return...?

Every registered person shall furnish an annual return for every financial year. However, the following persons are not required to furnish annual return:

- (i) Casual Taxable Persons;
- (ii) Non- resident taxable person;
- (iii) Input Service Distributors;
- (iv) Persons authorized to deduct/collect tax at source under section 51/52;
- (v) Any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force; and
- (vi) Persons supplying online information and data base access or retrieval services from a place outside India to a person in India.

Further, the Commissioner may, exempt any class of registered persons from filing annual return.

### 2. Self-certified Reconciliation Statement:

Every registered person who is required to furnish annual return and whose aggregate turnover during a financial year exceeds Rs. 5 Crores, shall also furnish a self-certified reconciliation statement in Form GSTR-9C along with the annual return on or before 31<sup>st</sup> December of the next financial year electronically through the common portal.

Reconciliation statement reconciles the value of supplies declared in the annual return furnished for the financial year with the audited annual financial statement.

### 3. Further, the registered person shall not be allowed to furnish an annual return for a financial year after the expiry of a period of 3 years from the due date of furnishing the said annual return, except where the Government allows.

## 14.7 Default in Furnishing Return [Sec. 46 & 47]

### 1. Notice to return defaulters [Sec. 46 read with sec. 52 and rule 68]

: A notice shall be issued, electronically, to a registered person who fails to furnish return under section 39 [Normal Return] or section 44 [Annual Return] or section 45 [Final Return]. Such notice shall require such registered person to furnish such return within 15 days.

### 2. Late fees levied for delay in filing return [Sec. 47(1)] : Any registered person who fails to furnish following by the due date:





**Important Note :** Blocking of e-waybill generation facility means disabling a taxpayer from generating the e-way bill. Blocking of GSTIN for e-way bill generation would only be for the defaulting supplier GSTIN and not for the defaulting Recipient or Transporter GSTIN. Suspended GSTIN cannot generate e-way bill as supplier. However, the suspended GSTIN can get the e-way bill generated as recipient or as transporter.

**Example :** Mr. A, a registered person paying tax under regular scheme in Delhi, has not filed Form GSTR-1 for last 2 months. Mr. B, Haryana, (a regular return filer) wants to generate an e-way bill for goods to be supplied to Mr. A.

Here, there will be no restriction in generating e-way Bill for Mr. B who is making outward movement of goods, as he is a regular return filer.

Mr. A wants to generate an e-way bill in respect of an outward supply of goods to Mr. H. E-way bill generation is blocked in this case as it's an outward movement of goods of Mr. A who has not filed GSTR-1 for past 2 months.

**Rule 138F : Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof**

(1) Where -

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- (a) a particular state government or union territory mandates furnishing of information regarding intra-State movement of gold, precious stones, etc. specified against serial numbers 4 and 5 in the Annexure appended to rule 138(14), and
- (b) the consignment value of such goods exceeds Rs. 2,00,000 or any other higher limit, as may be notified by the respective states or union territories,



then, notwithstanding anything contained in Rule 138, every registered person who causes intra-State movement of such goods, -

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an un-registered person,

shall, before the commencement of such movement within that State or Union territory, furnish information relating to such goods electronically, as specified in Part A of FORM GST EWB-01, against which a unique number shall be generated.

However, where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(2) Further, the information as specified in PART B of FORM GST EWB-01 shall not be required to be furnished in respect of movement of these goods and after furnishing information in Part-A, the e-way bill shall be generated in FORM GST EWB-01, electronically on the common portal.



(3) Further, remaining all other provisions of e-way bill rules, as they apply in case of other goods, shall also apply in respect of these goods also.

**Tax Invoice or bill of supply to accompany transport of goods [Rule 55A]**

The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

**Illustration 2 :** In case of transportation of goods by railways, whether goods can be delivered even if the e-way bill is not produced at the time of delivery?

**Solution :** As per proviso to rule 138(2A) of the CGST Rules, 2017, the railways shall not deliver the goods unless the e-way bill is produced at the time of delivery. [Circular]

**Illustration 3 :** Whether e-way bill is required in the following cases (assuming value of goods exceeding Rs. 50,000) -

- (i) Where goods transit through another State while moving from one area in a State to another area in the same State.
- (ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.

**Answer :** [Circular]

- (i) It may be noted that e-way bill generation is not dependent on whether a supply is inter-State or not, but on whether the movement of goods is inter-State or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated.
- (ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is no requirement to generate an e-way bill, if the same has been exempted u/r 138(14)(d) & if it is not exempted u/r 138(14)(d), then, the e-way bill will be required to be generated.

**"CA means Can do Attitude.  
I may fail, but  
I would not give up  
because I believe I can."**



## Latest Selected Circulars issued under GST

**Clarification on taxability of shares held in a subsidiary company by the holding company [Circular No. 196/08/2023 - GST, dated 17.07.2023]**

Issue: Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not.

Clarification: Securities are considered neither goods nor services under GST. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

**Clarification regarding applicability of GST on certain services [Circular No. 201/13/2023 - GST, dated 01.08.2023]**

Clarification 1: Services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate.

Clarification 2: Supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

- a. the food or beverages are supplied by way of or as part of a service, and
- b. supplied independent of the cinema exhibition service.

It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

**Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST [Circular No. 204/16/2023 - GST, dated 27.10.2023]**

Issue 1: Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.

Clarification:

Not in  
ICAI



1. As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per section 7(1)(c) of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.
2. Rule 28 of CGST Rules prescribes value of the supply between related parties, which is the open market value of such supply.
3. As per mandate provided by RBI, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits.
4. Therefore, there is no question of such supply/ transaction having any open market value. Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, no tax is payable on such supply of service by the director to the company.

**Issue 2:** Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.

**Clarification:**

1. Where the corporate guarantee is provided by a company (say, holding company) to the bank/financial institutions for providing credit facilities to the other company (say, subsidiary company), where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.
2. The taxable value of such supply of services, will be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not.

**Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period [Circular No. 195/07/2023 - GST, dated 17.07.2023]**

S.N.	Issue	Clarification
1	Whether GST would be payable on such replacement of parts or supply of repair services by original equipment manufacturer, without any consideration from the customer, as part of warranty?	The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. Therefore, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. However, if any additional consideration is charged by the



		<p>manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.</p>
2	<p>Whether in such cases, the manufacturer is required to reverse the ITC in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?</p>	<p>In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period.</p> <p>Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer is not required to reverse the ITC in respect of the said replacement parts or on the repair services provided.</p>
3	<p>Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?</p>	<p>In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer.</p> <p>However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.</p>
4	<p>In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the ITC in respect of such replacement of parts?</p>	<p>a. There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor and the manufacturer would be entitled to avail the ITC of the same. In such case, no reversal of ITC by the distributor is required in respect of the same.</p> <p>b. There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty.</p> <p>In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be</p>



		<p>made by the manufacturer in respect of the parts so replaced by the distributor under warranty.</p> <p>c. There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of section 34(2) of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.</p>
5	Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?	Yes, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the ITC of the same.
6	Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	<p>a. If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.</p> <p>b. However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)</p>



**Issue:** Advertising companies are often involved in procuring space on hoardings/ bill boards erected and mounted on buildings/land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:

**Case 1:** There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?

**Case 2:** There may be another case where the advertising company wants to display its advertisement on hoardings/ billboards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertising company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?

**Clarification:**

**Place of supply in Case 1:** The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding /structure is located.

**Place of supply in Case 2:** In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is infact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act.

**Clarification regarding Place of supply in case of supply of the "co-location services" [Circular]**

**Issue:** Co-location is a data center facility in which a business/company can rent space for its own servers and other Computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure.

A business/company who avails the co-location services primarily seek security and up keep of its server/s, storage and network hardware; operating systems, system software and may require to



interact with the system through a web-based interface for the hosting of its websites or other applications and operation of the servers.

In this respect, various doubts have been raised as to

- i. whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping /storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located; or
- ii. whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire

**Clarification:**

It is clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services" (S.No. 3 of Explanatory notes of SAC- 998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of co-location services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.

In such cases, supply of co-location services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the co-location services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service.

However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.