

**E-publication on Supplies  
by/to  
Government under GST**



**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)  
New Delhi

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## Foreword

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GST is levied on goods and services on supplies for a consideration in the course of business wherein in definition of business includes that any activity or transactions undertaken by the Central/State Government. However, certain exemption has been provided in regard to supplies made to Government and supplies made by Government. Except a few, most of the services provided by the Government are liable to be taxed under reverse charge i.e recipient is required to pay tax on the same instead of Government paying to itself. It is also important to note that transactions over Rs.2.5 lacs per contract are subject to TDS under the provisions of GST Law. Therefore, it is important to understand transactions with the Government.

Considering the nitty -gritty involved while transacting with Government, Indirect Taxes Committee of ICAI has decided to bring out **"E-publication on Supplies by/to Government under GST"**. The publications amply cover supplies made to and by the Government and major exemptions provided under the law in lucid and easy language. The provisions related to TDS under GST has also been discussed with example and illustrations, which Government has to deduct and deposit while making payment for supplies made to Government on account of deductee.

I appreciate the efforts put in by CA. Madhukar N. Hiregange, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of the Indirect Taxes Committee of ICAI for taking the initiative of bringing out this e-publication.

I hope that this publication would be immensely useful to the members and other stakeholders in their professional endeavors.

**CA. Naveen ND Gupta**  
President, ICAI

Date: 30.01.2019

Place: New Delhi



# Preface

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The Government in India are working mainly for upliftment of the society and as a regulator. It is also the largest buyer of goods and services. The Government and its agencies are primarily entrusted with task of administration, development, maintenance, upgradation etc. of basic facilities to the citizens like education, public transport, electricity supply, public health & safety etc. The major source of revenue of the Government is revenue from taxes. Therefore, there is no use of collecting taxes from itself. However, the Government has also been providing some services which are in direct competition with the private players. Therefore, exempting the entire services of the Government is not a good idea as far as GST is concerned.

The Indirect Taxes Committee has come out with “**E-publication on Supplies by/to Government under GST**” wherein all the provision related to supplies by/to Government has been briefly discussed. Further, all the exemption on supplies by/to Government have been thoroughly analysed in addition to the aspects related to registration, time and value of supply, input tax credit, e-way bills, GST Audit compliance etc. The provisions have been explained in an easy language and possible practical examples/ illustrations and FAQ have been given for easy and quick interpretation.

We thank CA. Naveen N.D Gupta, President and CA. Prafulla Chhajed, Vice – President, ICAI for giving us the space to deliver and support for this initiative. Special thanks to the untiring effort of CA Avinash Poddar, CA. Arun Kumar Agarwal, CA. Venugopal Gella and CA Subham Khaitan for drafting and CA. Jatin Harjai for reviewing this publication. We also appreciate the dedicated efforts of the entire secretariat of Indirect Taxes Committee.

Welcome to a professionalized learning experience in GST.

**CA. Madhukar Narayan Hiregange**  
Chairman  
Indirect Taxes Committee

**CA. Sushil Kumar Goyal**  
Vice-Chairman  
Indirect Taxes Committee

Date: 30.01.2019

Place: New Delhi



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## Chapter 1

# Background

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GST is an indirect tax levied on **supply of goods or services** or both, which has subsumed many indirect taxes that were prevalent in India earlier. GST is levied on supply of goods or services, irrespective of whether the supply is undertaken by the Central Government, a State Government, or by any local authority in which they are engaged as public authorities thus contributing towards the country's GDP. Gross domestic product (GDP) is the monetary value of all the finished goods and services produced within a country's borders during a specific time period. GDP includes all private and public consumption, government outlays, investments, private inventories, etc. To put it simply, GDP is a broad measurement of a nation's overall economic activity.

The economic activities of any country which contributes towards the country's GDP are the following:

1.	<b>Primary Activity</b>	
	<ul style="list-style-type: none"> <li>➤ Agriculture</li> <li>➤ Mining</li> <li>➤ Fishing</li> </ul>	<ul style="list-style-type: none"> <li>➤ Forestry</li> <li>➤ Farming etc.</li> </ul>
2.	<b>Secondary Activity</b>	
	<ul style="list-style-type: none"> <li>➤ Manufacturing</li> <li>➤ Processing</li> </ul>	<ul style="list-style-type: none"> <li>➤ Construction activity</li> </ul>
3.	<b>Tertiary Activity</b>	
	<ul style="list-style-type: none"> <li>➤ Service industry</li> </ul>	
4.	<b>Quaternary Activity</b>	
	<ul style="list-style-type: none"> <li>➤ Government</li> <li>➤ Culture</li> <li>➤ Libraries</li> </ul>	<ul style="list-style-type: none"> <li>➤ Scientific research</li> <li>➤ Education</li> </ul>

All the above activities are undertaken by the government either as a supplier of goods or services, or as a consumer of goods or services, thus contributing towards country's GDP. The GDP growth of India was at 6.3% in the second quarter of 2018-19, signalling a turnaround of the economy. It is expected to grow at 7.2% to 7.5% in the second half as stated in the Budget Speech 2018-19 by the Finance Minister Mr. Arun Jaitley.

### 1. What is the meaning of 'Government'?

As per section 2(53) of the CGST Act, 2017 and Section 2(9) of IGST Act, 2017, 'Government' means the Central Government. In the same manner, Section 2(53) of the State GST enactment(s) define 'Government' to mean Government of the respective State. As per clause (8) of section 3 of the General Clauses Act, 1897, 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, means the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and

in the name of the President. Similarly, as per clause (60) of section 3 of the General Clauses Act, 1897, the 'State Government', with respect to anything done after the commencement of the Constitution, shall mean, in a State, the Governor, and in an Union Territory, the Central Government. As per Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, as per Article 166 of the Constitution, all executive actions of the Government of State shall be expressed to be taken in the name of Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive powers of the State vested in the Governor and in the name of the Governor. (Source – FAQ released by CBEC)

## 2. Revenue Models

### 2.1 Why Public Private Partnership (PPP)?

For economic growth and development, we need lots of investments. Government can provide limited funds for investment in public infrastructures and services. However, many players in the Private Sector have enormous capital for investments. If a system can be developed whereby private players can be made to invest in public goods, they can help to foster economic growth, and also earn profits.

Thus, to develop infrastructures for development, the government worked out a system where private players can come in forward for creation of public infrastructures which are traditionally provided by the government.

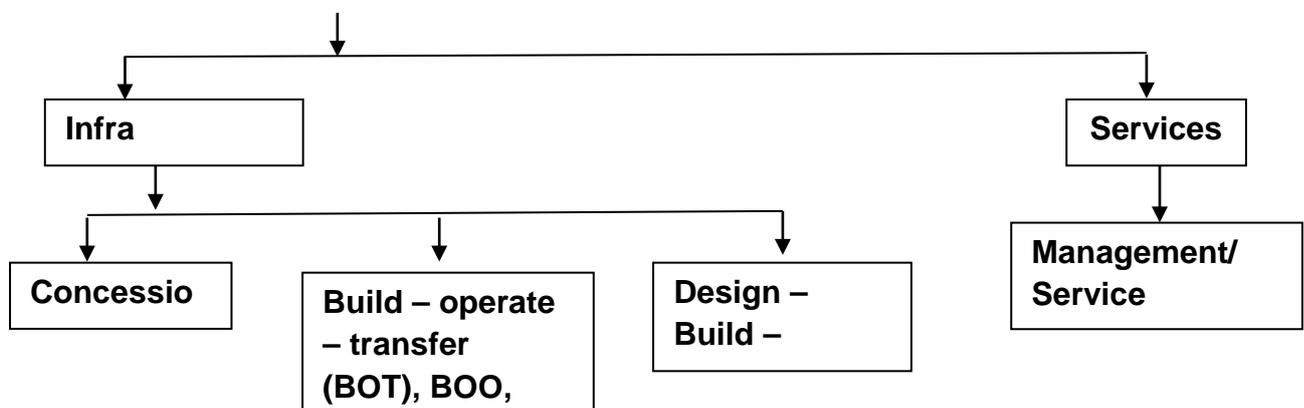
Various services are identified, which were not being managed by the government agencies due to certain inherent institutional weaknesses. The services are anyway required to be provided to the citizens. The Private Sector players, having expertise, managerial capability and institutional strengths to manage various services and utilities efficiently, when permitted by the Government to participate in such public services, it will result in good management of services and better services being provided.

It is with the realization of these advantages, and the possibility of leveraging private capitals and management expertise, that the public authorities introduced the concept of Public-Private Partnership.

### 2.2 Definition of Public-Private Partnership (PPP)

"PPP" means an arrangement between government (or statutory entity or government owned entity) on the one side and a private sector entity on the other, for the provision of public assets and/or related services for public benefit, through investments being made by and/or management undertaken by the private sector entity for a specified period of time, where there is a substantial risk sharing with the private sector and the private sector receives performance linked payments that conform (or are benchmarked) to specified, pre-determined and measurable performance standards.

### 2.3 Types of PPP models



## 2.4 Concessions

- The concession arrangement is that the private sector (concessionaire) is responsible for full delivery of the services including operation & maintenance, collection of fee, management, construction and rehabilitation of the system
- Assets are owned by the government (including the concession period)
- The government will establish standards and ensure that the concessionaire meet them
- The concessionaire collects fees/tariffs from the users as determined in the concession contract
- Thus, the role of the government shifts from provider of service to that of a Regulator.

## 2.5 Build – operate – transfer (BOT)

A Build Operate Transfer (BOT) Project is typically resorted to develop a discrete asset rather than a whole network and is generally new or Greenfield in nature (although refurbishment may be involved).

In a BOT Project the project company or operator generally obtains its revenues through a fee charged from the utility/ government rather than tariffs charged to consumers.

- BOT is a specialized nature of concession. Hence, the distinction between Concession and BOT is quite narrow, and mainly in its usage of the terms.
- In BOT, the private partner provides the capital required for investment
- The private partner owns the assets, sufficient enough to recover investment costs through user charges
- The private party collects user charges
- The public sector agrees to purchase a minimum level of output produced by the facility
- At the end of the contract, the ownership of asset reverts back to the government.

## 2.6 Build – Own – Operate – Transfer (BOOT)

Build-Own-Operate-Transfer (BOOT) is a form of project financing, wherein a private entity receives a concession from the private or public sector to finance, design, construct, and operate a facility stated in the concession contract. This enables the project proponent to recover its investment, operating and maintenance expenses in the project. Due to the long-term nature of the arrangement, the fees are usually charged during the concession period. The rate of increase is often tied to a combination of internal and external variables, allowing the proponent to reach a satisfactory internal rate of return for its investment.

## 2.7 Design – Build - Operate (DBO)

In DBO Project the public sector owns and finances the construction of new assets. The private sector designs, builds and operates the assets to meet certain agreed outputs. The documentation for a DBO is typically simpler than a BOT or Concession as there are no financing and will typically consist of a turnkey construction contract plus an operating contract, or a section added to the turnkey contract covering operations.

The Operator is taking no or minimal financing risk on the capital and will typically be paid a sum for the design-build of the plant, payable in instalments on completion of construction milestones, and then an operating fee for the operating period. The operator is responsible for the design and the construction as well as operations.

### 2.8 Management Contract

- It is an arrangement whereby the government contracts out the operation & maintenance of public service (utility, hospital, port, water supply etc.)
- The required infrastructure is already created and the private parties provide working capital for daily maintenance
- The Government retains the assets, continues major capital investments and sets tariff
- Private party is responsible for the management, and is paid for the costs of labour and operating costs and incentives
- Potential Strengths-
  - Operational gains from private sector management
  - Assets remain with the government and continue major investments
  - Contracts are easy to develop

Let us understand one of the above models with an example. XYZ Municipal Corporation had invited bids for constructing a flyover in Kolkata. The scope of work includes "Design, engineering, financing, procurement, construction, operation and maintenance of the flyover in Kolkata on Design Build Finance Operate (DBFOT) basis. The successful bidder shall be given the rights to collect toll from the vehicles which would use the flyover and also the right to collect revenue from advertisements on the flyover both for a period of 30 years. Effectively the successful bidder had to construct the flyover for XYZ from his own funds and in consideration it would receive the rights to collect the revenue from tolls and advertisement. ABC Pvt. Ltd. had bid and has been awarded the contract for constructing the above referred flyover in Kolkata by XYZ Municipal Corporation.

As per the GST Law, the construction of the flyover is a works contract service provided to the local authority (Municipal Corporation) of Kolkata, which is taxable at the rate of 12% as per notification no. 11/2017 – Central Tax (Rate) dated 28.06.2017. Further as understood from the above arrangement, the sources of revenue from the above project will be as follows –

- Toll charges
- Advertisement charges

Service by way of access to a road or a bridge on payment of toll charges is exempted whereas the advertisement charges are taxable under GST.

The above arrangement is very much prevalent in the country for the development of public infrastructures which are traditionally provided by the Government to the public of the country.

Examples of Public Private Partnership in India are –

- Sister Nivedita Bridge in Kolkata - BOT Project
- Underground Car Parking System in Kolkata – BOOT Project
- Mumbai Metro - PPP Project

### 3. Whether activities performed by Government is business or not?

Section 2(17) of the CGST Act, 2017 defines 'business' to includes

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

It is clearly evident from clause (i) of the Section 2(17) that for the purposes of GST any activity or transaction undertaken by the Central or State Government or any local authority, in which they are engaged as public authorities, shall be deemed to be business.

#### 4. "Supply" under GST regime

Since the taxable event in GST law is Supply of goods or services or both, most aspects of taxability revolves around the term 'supply' which is defined in Section 7(1) of the CGST Act, 2017 to include –

- (a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
  - (b) import of services for a consideration whether or not in the course or furtherance of business;
  - (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
  - (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
- (2) Notwithstanding anything contained in sub-section (1),-
- (a) activities or transactions specified in Schedule III; or
  - (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

The CGST (Amendment) Act 2018, which has got the assent of the President on 29<sup>th</sup> August 2018, has amended Section 7 so as to delete clause (d) of Section 7(1) and new sub-section (1A) has been inserted (with retrospective effect from 01.07.2017) after Section 7(1), which is as under:

"(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II"

The impact of the above amendment shall be that the Schedule II will remain a classification schedule only, i.e. entries mentioned in Schedule II will not express that a particular activity or transaction is supply of goods or services, rather if something is already treated as supply then it will express whether it will be supply of goods or of services.

The effective date of the amendments made through the CGST (Amendment) Act 2018 is yet to be notified.

### 5. Reverse Charge Mechanism

Reverse Charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services as enumerated in Section 9(3) or 9(4) of the CGST Act. Reverse charge liability on procurement of supply of taxable goods or services from unregistered person has been exempted by the government till 30<sup>th</sup> September 2019 through Notification No. 8/2017 Central Tax (Rate), as amended from time to time. *Notification No. 4/2017 Central Tax (Rate) & 13/2017 – Central Tax (Rate), both dated 28.06.2017*, prescribe the specified supplies of goods or services, respectively, on which tax is to be discharged by recipient of supply as per provisions of Section 9(3). Majority of supplies made by government comes under the provisions of Section 9(3), details of which are discussed in Chapter 2: Legal Framework of this publication.

### 6 Taxable Vs. Non-Taxable Vs. Exempt Supplies

Section 2(108) defines taxable supplies to mean a supply of goods or services or both which is leviable to tax under the GST law. On the same parity, Non-taxable supply is defined by section 2(78) to mean a supply of goods or services or both which is not liable to tax under GST law. Both the definitions are complementary and supplementary to each other i.e. if there is some supply of goods or services, either it shall be classified as Taxable Supply or Non-Taxable supply depending on whether levy of GST is attracted or not. For example, liquor for human consumption sold by any person is supply of goods but as per provisions of section 9 it is not liable to GST, accordingly it will be treated as Non-Taxable Supply. On the other hand, sale of unbranded wheat or used vehicles shall be treated as Taxable Supplies since levy of GST is there.

'Exempt supply' is defined in section 2(47) to mean supply of goods or services which are charged at NIL rate of tax or are wholly exempt from tax or non-taxable supplies. By the above said definition it is clear that for all purposes of the GST law all non-taxable supplies and taxable supplies which are either wholly exempt or nil rated, shall be treated as exempt supplies.

Many supplies like the following, provided and/ or received by government are exempt:

- Pure services **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. (Entry no. 3 of Notification No. 12/2017 Central Tax (Rate), dated 28.06.2017.
- Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution. (Entry no. 3 of Notification No. 12/2017 Central Tax (Rate), dated 28.06.2017.

Details of all supplies provided by or to government are discussed in chapter 3 and 4 of this publication.

### 7. Concessional Rate of Tax

At times government supplies are chargeable to tax at concessional rate of tax. Examples are:

Description of Service	Rate	Conditions
(i) works contract supplied to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity, - <ul style="list-style-type: none"><li>• historical monument</li><li>• canal</li></ul>	12%	Government Entity- should have procured in relation to a work entrusted to it by the CG/SG/UT/LA

<ul style="list-style-type: none"> <li>• pipeline</li> </ul>		
<ul style="list-style-type: none"> <li>(ii) works contract <ul style="list-style-type: none"> <li>(a) a road, bridge</li> <li>(b) a civil structure or any other original works under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana;</li> <li>(c) a civil structure or any other original works pertaining to the "In-situ rehabilitation of existing slum dwellers using land as a resource through private participation"</li> <li>(d) a civil structure or any other original works pertaining to the Pradhan Mantri Awas Yojana;</li> <li>(e) a pollution control</li> <li>(f) a structure meant for funeral</li> </ul> </li> </ul>	12%	
<ul style="list-style-type: none"> <li>(iii) works contract pertaining to,- <ul style="list-style-type: none"> <li>(a) railways</li> <li>(b) a single residential unit</li> <li>(c) low-cost houses under the 'Scheme of Affordable Housing in Partnership'</li> <li>(d) low cost houses under- <ul style="list-style-type: none"> <li>(1) Pradhan Mantri Awas Yojana;</li> <li>(2) any housing scheme of a State Government;</li> </ul> </li> <li>(e) post-harvest storage infrastructure</li> <li>(f) mechanised food grain handling system.</li> </ul> </li> </ul>	12%	

# Legal Framework

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## Relevant Definitions

As per Section 2(53) of the CGST Act 2017, "Government" means the Central Government. The term 'Central Government' has not been defined under the law. The definition of Central Government has been given in Section 3(8) of the General Clauses Act as under:

**"Central Government"** shall-

- (a) in relation to anything done before the commencement of the Constitution, means the Governor-General or the Governor General in Council, as the case may be and shall include-
  - (i) in relation to functions entrusted under sub-section (1) of section 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and
  - (ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of section 94 of the said Act; and
- (b) in relation to anything done or to be done after the commencement of the Constitution, means the President; and shall include-
  - (i) in relation to functions entrusted under clause (1) of Article 258 of the Constitution, to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;
  - (ii) in relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant-Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under Article 239 or Article 243 of the Constitution, as the case may be;
  - (iii) in relation to the administration of a Union Territory, the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution;"

Section 2(53) of the various SGST Acts refers to their respective State Governments. The definition of the State Government has not been given under the State GST Acts. The definition of the State Government as per the General Clauses Act is as under:

**"State Government"**-

- (a) as respects anything done before the commencement of the Constitution, shall mean, in a Part A State, the Provincial Government of the corresponding Province, in a Part B State, the authority or person authorized at the relevant date to exercise executive government in the corresponding Acceding State, and in a Part C State, the Central Government;
- (b) as respects anything done after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a Part A State, the Governor in a Part B State, the Rajpramukh, and in a Part C State, the Central Government;
- (c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union Territory, the Central Government; and shall, in relation to functions entrusted under Article 258A of the Constitution to the

Government of India, include the Central Government acting within the scope of the authority given to it under that article

'Local authority' as defined under section 2(69) of the CGST Act means:

- (a) a Panchayat as defined in clause (d) of Article 243 of the Constitution;
- (b) a Municipality as defined in clause (e) of Article 243P of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under Article 371 of the Constitution; or
- (g) a Regional Council constituted under Article 371A of the Constitution;

As per the definitions given under Notification no. 11/2017-Central tax (rate) and Notification no. 12/2017-Central tax (rate) dated 28<sup>th</sup> June 2017:

"Governmental Authority" means an authority or a board or any other body, - (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under Article 243 W of the Constitution or to a Panchayat under Article 243 G of the Constitution.

"Government Entity" means an authority or a board or any other body including a society, trust, corporation, (i) set up by an Act of Parliament or State Legislature; or (ii) established by any Government, with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

## Levy of GST

As per Section 9 of the CGST Act, CGST is leviable on intra state supply of goods or services or both. Similarly, section 5 of the IGST Act states that IGST shall be levied on inter-state supply of goods or services or both. The goods or services or both cover all but not alcoholic liquor for human consumption. The maximum rate at which GST can be levied as per the GST law has been specified as 40% (20% - CGST and 20% - SGST). Further, it has been prescribed that the value on which tax will be payable is to be determined as per section 15 of the CGST Act 2017 or the valuation rules. Finally, tax is to be paid by every taxable person. This means that every person if registered (though not liable to register) or liable to be registered (though not registered) needs to pay taxes under the GST regime.

## Supply

One needs to refer to Section 7 of the CGST Act, 2017 to find out the scope of the term 'supply'.

Section 7(1) gives an inclusive meaning to the term supply and gives a depiction of what should be covered within the said meaning. The definition of supply has four legs to it. The first leg covers all types of supplies of goods and/or services including sale, barter, exchange etc if made in the course or furtherance of business for a consideration. The second leg of the definition covers import of services with consideration even though it may or may not be in the course or furtherance of business. The third leg under Schedule I cover those supplies which are without consideration. The final leg deems certain activities to be supply of goods or supply of services as the case may be.

### **Activities treated neither as supply of goods nor supply of services**

Section 7(2) of the CGST Act 2017 overrides the definition of supply given under Section 7(1) of the CGST Act 2017. The inference derived here is that the activities or transactions covered under Section 7(2) will not be considered within the definition of supply at all. Section 7(2)(b) of the CGST Act 2017 states that the activities or transactions undertaken by the Central Government or State Government or local authority in which they are engaged as public authorities as may be notified by the Government on the recommendations of the Council will neither be treated as supply of goods nor supply of services. Thus, any activities or transactions which are notified by the Government under this clause will not be treated as supply altogether.

As of now, under Section 7(2) of the CGST Act, 2017, the Central Government has notified only one kind of activity in which Central Government or State Government or local authority are engaged as public authorities shall be treated neither as supply of goods nor supply of services. The activities specified herein are the services by way of any activity in relation to a function entrusted to a Panchayat under Article 243G of the Constitution of India.

Article 243G of the Constitution of India entrusts powers, authority and responsibilities to the Panchayats. The Constitution of India endows the Panchayats to such powers and authority to enable them to function as institutions of self-government. Also, it allows the law to contain provisions for the devolution of powers and responsibilities upon Panchayats subject to certain conditions with respect to:

- (a) the preparation of plans for economic development and social justice
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule

The activities specified within the Eleventh Schedule are Agriculture, including agricultural extension; Land improvement, implementation of land reforms, land consolidation and soil conservation; Minor irrigation, water management and watershed development; Animal husbandry, dairying and poultry; Fisheries; Social forestry and farm forestry; Minor forest produce; Small scale industries, including food processing industries; Khadi, village and cottage industries; Rural housing; Drinking water; Fuel and fodder; Roads, culverts, bridges, ferries, waterways and other means of communication; Rural electrification, including distribution of electricity; Non-conventional energy sources; Poverty alleviation programme; Education, including primary and secondary schools; Technical training and vocational education; Adult and non-formal education; Libraries; Cultural activities; Markets and fairs; Health and sanitation, including hospitals, primary health centres and dispensaries; Family welfare; Women and child development; Social welfare, including welfare of the handicapped and mentally retarded; Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes; Public distribution system; Maintenance of community assets

### **Reverse charge Mechanism**

Section 9(3) of the CGST Act 2017 allows the Government to notify categories of supply of goods or services or both the tax on which will be paid by the recipient of such goods or services or both. The provisions of the Act treat such recipient as if he is the person liable to pay tax in relation to supply of such goods or services or both. Similarly, section 5(3) of the IGST Act 2017 deals with reverse charge payable by the recipient on certain categories of inter-state supply of goods or services or both.

Notification no. 13/2017-Central Tax (rate) dated 28<sup>th</sup> June 2017 was issued under the CGST Act which contained the categories of goods or services or both on which reverse charge is applicable. Corresponding notification in respect of interstate supply of goods or services has also been issued namely Notification no. 10/2017-Integrated Tax (rate) dated 28<sup>th</sup> June 2017. These two notifications have been amended prospectively from time to time through a number of subsequent notifications.

Entry no. 5 of Notification no. 13/2017-Central tax (rate) dated 28<sup>th</sup> June 2017 and entry no. 6 of the Notification no. 10/2017-Integrated Tax (rate) dated 28<sup>th</sup> June 2017 talks about the supplies by the Central Government, State Government, Union territory or local authority. It has been enumerated that all services except a few as mentioned hereunder are liable under reverse charge mechanism if they are provided by Central Government, State Government, Union territory or local authority to the business entity located in the taxable territory:

- (1) renting of immovable property, and
- (2) services such as the following namely
  - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;
  - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  - (iii) transport of goods or passengers.

In effect, it means that the supplier i.e. the Central Government, State Government, Union Territory or local authority will continue to pay taxes in respect of the services given above if the said services are taxable. Any other service, if received by a business entity located in the taxable territory will be liable under reverse charge mechanism and the tax is liable to be paid by such entity. Any person other than the business entity receiving such services will not be liable to pay taxes under reverse charge.

Further, Notification no. 3/2018-Central Tax (rate) dated 25<sup>th</sup> January 2018 amended the said notification no. 13/2017-Central Tax (rate) dated 28<sup>th</sup> June 2017 to insert a new entry no. 5A effective from 25<sup>th</sup> January 2018. Corresponding entry no. 6A has been inserted vide Notification no. 3/2018-Integrated Tax (rate) dated 25<sup>th</sup> January 2018 in the Notification no. 10/2017-Integrated Tax (rate) dated 28<sup>th</sup> June 2017. As per the said entry, services supplied by the Central Government, State Government, Union Territory or local authority by way of renting of immovable property to a person registered under the CGST Act 2017 are liable under reverse charge mechanism. It may be noted here that any registered person and not just a business entity receiving services from the Government will be liable to pay tax under reverse charge mechanism. However, only a person registered under the CGST Act 2017 will be liable under reverse charge. An unregistered person need not register himself for payment of taxes under the given entry if he is otherwise not liable for registration.

#### **Tax Deducted at Source**

Section 51 deals with tax deducted at source. Notification no. 1/2017-Central Tax dated 19<sup>th</sup> June 2017 and Notification no. 9/2017-Central tax dated 28<sup>th</sup> June 2017 which enlisted the sections applicable under GST from 22<sup>nd</sup> June 2017 and 1<sup>st</sup> July 2017 respectively did not include Section 51. This section has not been made applicable till date.

Section 51(1) overrides the entire Act. This means that anything contrary in the entire Act as compared to the provisions given under the said section will not be valid and only the provisions of the said section will hold good. As per the said section, the following categories of persons (deductors) will need to deduct tax at the rate of one percent under the CGST law from the payment made or credited to the supplier (deductees) of the taxable goods or services or both where the total value such supply under a contract exceeds rupees two lakh and fifty thousand rupees:

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or

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- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council

As per above clause (d), certain categories of persons can be notified by the Government on the recommendations of the Council who will also be required to deduct tax at source under Section 51. Within the powers of the said section, Notification no. 33/Central tax dated 15<sup>th</sup> September 2017 and amendment notification no. 50/2018 dated 13<sup>th</sup> Sep 2018 were issued. As per the said section, the following categories of persons have been specified to deduct tax at source under Section 51:

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

The effective date from which provisions of section 51 came into force is 1<sup>st</sup> October 2018.

The CBIC, vide circular no. 76/50/2018 dated 31.12.2018 clarified that the requirement of 51% or more participation by way of equity or control is applicable to both clauses i.e. (i) & (ii) mentioned therein. That means if any government doesn't hold equity or control, as described above, on any board or other body which is set up under an Act of Parliament or State Legislature (eg. ICAI), shall not fall in the ambit of persons notified for the purposes of deduction of TDS.

It should also be stated here that the rate of tax of 1% has been specified under the CGST law. A similar rate of 1% has also been given under the SGST law. In effect, a total tax rate of 2% will be applicable on the payment made or credited to the supplier.

Also, the deduction of tax at source will only be applicable if the payment is in respect of taxable goods or services or both. Any payment against receipt of Non-Taxable goods or services or both will not attract any tax deduction at source.

Considering the difficulties faced by the public-sector undertakings, a proviso was inserted vide notification no. 61/2018 Central Tax dated 05.11.2018 specifying that TDS provisions will not be applicable for supplies goods or services or both between public sector undertakings or between distinct persons of the same Public Sector Undertakings. Having said that, it can be understood that whenever any supply takes place between public sector undertakings or between different establishments of same PSU, no TDS shall be required to be deducted for such supplies.

Expanding it further vide notification no. 73/2018 Central Tax dated 31.12.2018, it has been notified that the whenever any supplies take place between the person responsible for deduction of TDS, the provisions of section 51 shall not be applicable in such cases. That means, the TDS is not required to be deducted for the supplies of goods or services or both, not only in cases of PSU's, but even where the supplier is any person responsible to deduct tax and the recipient also falls under the same category.

Further, the contract value is pertinent to determine the applicability of tax deducted at source. For ascertaining the applicability of the said section, the actual payment value is not relevant. If the contract value is greater than rupees two lakh and fifty thousand, the provisions of tax deduction at source will be attracted even though the actual payment made is lower.

However, the value on which tax is to be deducted at source will be the actual payment made or credited to the supplier. The time of deduction of payment may be when the amount is credited even though there is no

actual payment. The contract value is only for the applicability of the provisions of tax deduction. However, the actual payment or credit value is used as the base on which tax is to be deducted. This value which is taken as the base should be exclusive of Central tax, State tax, Union territory tax and cess indicated in the invoice.

Further, it has been specified that if the location of the supplier and the place of supply is in a state or Union territory which is different from the state or as the case may be, Union territory of registration of the recipient, then no deduction of tax at source is required to be made.

The proviso to Section 51(1) can be understood from following table:

Location of Supplier	of	Location of Recipient	of	Place of Supply	Liabe to deduct TDS	Tax to be deducted
Mumbai		Mumbai		Mumbai	Yes	CGST @ 1% & SGST @ 1%
Jaipur		Mumbai		Mumbai	Yes	IGST @ 2%
Jaipur		Mumbai		Jaipur	No	NA

Effectively, this means that if both the location of supplier and place of supply are situated in a state/ UT other than the location of the recipient then no tax is required to be deducted by the recipient.

The amount of tax deducted is required to be paid by the deductor to the Government within 10 days after the end of the month in which the deduction is made. Further, after deduction of such TDS and making of payment to the Government, the deductor will provide a certificate to the deductee. Such certificate will contain the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars as are prescribed. Such TDS certificate is required to be provided by the deductor to the deductee within 5 days of crediting of the amount to the Government exchequer. On failure to furnish such certificate within the given time period, a late fee of Rs. One hundred per day from the day after the expiry of the period of 5 days until the failure is rectified is required to be paid subject to a maximum of Rs. Five thousand. Such provision for late fees has been incorporated under both the CGST and SGST Acts. The total amount of late fee as prescribed under the Act will be Rs. 100 under each of the Acts i.e CGST and the relevant SGST Acts. Thus, the total amount that is required to be paid on late furnishing of such certificate will be Rs. 200 per day.

The amount that is paid by the deductor on behalf of the deductee can be claimed as credit by the deductee. Once the relevant amount is paid to the Government by the deductor and the relevant return is filed by such deductor, such amount will be available as credit under the electronic cash ledger of the deductee. While filing the return the deductee can claim such credit by debiting the electronic cash ledger. On failure to pay to the Government the amount deducted as tax, an interest under Section 50(1) will be leviable in addition to the tax deducted to the deductor. The rate of interest under this section has been prescribed at the rate of 18% as per Notification no. 13/2017-Central tax dated 28<sup>th</sup> June 2017.

On non-payment or short payment or erroneous refund of such amount, the tax will be recovered in terms of sections 73 and 74. Further, any excess or erroneous deduction of tax by the deductor will be refunded as per the provisions of Section 54. However, once the amount is credited to the electronic credit ledger of the deductee, no refund can be claimed.

#### Nature of contracts

On perusal of the contracts entered with the Government, it can be noticed that the value of such contracts is generally all inclusive. This means that irrespective of the tax rate and amount, the value of the contract does not change. However, the evaluation of the contract from the perspective of the contractor should be

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made by calculating the value received by the contractor after payment of tax amount. So, the profitability and the margin should be carefully analysed by the contractor after excluding the tax to be paid to the Government.

In other words, it means that the burden of taxation even though shown as charged to the Government will be required to be paid by the contractor from his own pocket. Any change in the tax rate in future does not impact the total value of the contract which is inclusive of tax. So, any change in tax incidence affects the contractor directly and not the contractee. However, it is suggested here that the contractual terms be carefully analysed and interpreted to find out the tax implications. While, the above may be true for most of the contracts, it may not be for every contract. Other types of contracts wherein the contractual value is exclusive of tax may also exist. So, proper evaluation by the contractor should be made after a diligent perusal of the contractual terms.

In situations where the contract was entered before the advent of GST, the interpretation of the contractual terms becomes very pertinent. Where the contract terms only mention about the earlier tax regime i.e. service tax, VAT etc., it should be analysed whether a supplementary contract for factoring the aspect of GST should be included. This will help in avoiding any future disputes of the person who needs to bear the burden of taxation. Of course, if the contract already takes care of the effect of any tax regime changes, then the need for such supplementary contract may not arise. These aspects should be kept in mind before reaching any conclusion on the impact of GST under the contract.

### **Registration**

Ordinarily, a person having an aggregate turnover greater than Rs. Twenty lakhs in a financial year in non-Special category states is required to obtain registration. This limit is however, Rs. 10 lakhs in case supplies are provided from Special Category states. The registration is required in each of the States or Union territories from where taxable supplies are made. In respect of certain supplies, the Government has mandated the requirement of obtaining registration irrespective of the turnover of the entity. No threshold limit applies to such entity for the purpose of registration.

One of the classes of persons required to obtain compulsory registration has been specified as a person required to deduct tax at source under Section 51(1) whether or not separately registered under the CGST Act 2017. A person required to deduct tax at source may be separately registered under the act already for the purpose of such deduction of tax at source. However, such person will also require normal registration (other than registration as a deductor under TDS) irrespective of the turnover of such entity. Therefore, all the entities as enlisted above for the purpose of deduction of tax at source under Section 51 will also be required to obtain registration under the CGST Act 2017.

As per Notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 (as amended from time to time), on services supplied by the Central Government, State Government, Union territory or local authority to a business entity, reverse charge mechanism under section 9(3) is applicable excluding the following services namely renting of immovable property, services by the Department of Posts, services in relation to an aircraft or a vessel, transport of goods or passengers. Hence, in these cases where reverse charge mechanism is not applicable, supplier i.e. the Central Government, State Government, Union Territory or local authority shall have to get registered.

Accordingly, in cases where services are supplied by a person other than the Central Government, State Government, Union Territory and Local Authority the same is not covered under reverse charge mechanism and accordingly in those cases the supplier is required to obtain registration. Therefore, any corporation established by or under any central act, state act or a provincial act or a government company as defined under clause (45) of section 2 of the Companies Act, 2013 are required to obtain registration under GST Act unless they are engaged in providing exclusively exempt supplies.

On the same analogy, as per Notification No. 4/2017 – Central Tax (Rate) dated 28.06.2017 (as amended from time to time), on specified supplies of goods by Government, reverse charge mechanism under section 9(3) is applicable. However, if there is supply of goods by government which doesn't attract RCM under section 9(3) then the liability to get registered and pay tax shall be on the respective government department. For instance, if any government department sells confiscated vehicles or goods to unregistered person(s) the same shall not be covered by the RCM and liability to pay tax shall be on supplier i.e. government.

### **Procedure for Registration [Section 25]**

An application for registration is to be filed within 30 days from the date on which liability for registration arises, in Form GST REG – 01. Thereafter registration will be granted after proper verification and approval by the proper officer. Single registration will be granted in each state. A person who has obtained more than one registration in a state, shall, in respect of each such registration be treated as distinct person. Every person shall have PAN in order to be eligible for grant of registration.

### **Documents/Information required for Registration**

The following documents shall be readily available to be uploaded while applying for Registration in Form GST Reg-01:

- ✓ PAN (or TAN) Number of the company/ department
- ✓ Valid email id and mobile number
- ✓ Proof of constitution of business (Certificate of Incorporation)
- ✓ Address proof for the place of business
- ✓ Bank Statement showing name, address and few transactions.
- ✓ Details of Primary Authorised Signatory and directors of the company in terms of Name, DOB, Father Name, Mobile Number, Email Id, DIN No, Aadhaar No, PAN No and Address including their passport size photograph
- ✓ Digital Signature Certificate of Primary Authorised Signatory

### **Amendment in Registration [Section 28 read with Rule 19]**

Where there is any change in the particulars furnished in the application of registration, the registered person shall within a period of 15 days of such change, submit an application duly signed and verified, electronically in form GST REG-14 along with the documents relating to such change on the common portal. Thereafter, the proper officer shall verify such information and accordingly accept or reject the application so filed in Form GST REG-14 in the manner provided under Rule 19.

### **Cancellation of Registration [Section 29 read with Rule 20]**

Cancellation can be made suo-motu by the proper officer or on an application filled by the registered person having regard to the circumstances such as discontinuance of business, change in constitution of business, or person no longer liable for registration. For cancellation, a registered person shall electronically submit an application in Form GST REG 16, at the common portal within a period of 30 days of the occurrence of event warranting the cancellation.

On cancellation of registration, the registered person shall pay, by way of debit in electronic credit ledger or electronic cash ledger, the amount of ITC in respect of inputs held in stock/ semi-finished/ finished goods / capital goods / plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher.

Time limit for issue of Invoice

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- ✓ Tax Invoice to be issued for supply of taxable goods before or at the time of
- ✓ Removal of goods, where the supply involves movement of goods or
- ✓ Delivery of goods or making available thereof to the recipient, in any other case.
- ✓ Tax invoice to be issued for supply of service before or after the provision of service but
- ✓ within 30 days from the date of supply and
- ✓ within 45 days from date of supply of service in case of insurer, banks, Financial institutions including NBFCs, or a telecom operator.

### Contents of Invoice [Rule 46]

Tax Invoice - Contents	
Name, address and GSTIN of the supplier and recipient	A consecutive serial number not exceeding 16 characters
Date of issue of Invoice	Name, address of the recipient, address of delivery, State and its code if un-registered and value of taxable supply Rs. 50,000/- or more
HSN code of goods and accounting Code of services	Description, Quantity, Taxable value (including discount or abatement), Total Value of goods or services
Amount and rate of tax charged in respect of taxable goods or services	Place of supply along with name of state and address of delivery where the same is different from the place of supply
Whether tax payable on RCM basis	Signature or digital signature of the supplier or his authorized representative

### Manner of issuing tax invoice [Rule 48]

Supply of Goods (TriPLICATE)	Supply of Services (duplicate)
Original copy for recipient	Original copy for recipient
Duplicate copy for transporter	Duplicate copy for supplier
TriPLICATE copy for supplier	

### Bill of Supply [Section 31(3) read with Rule 49]

A registered person is required to issue bill of supply if he is engaged in supplying exempted goods or services or both or paying tax under composition scheme.

Bill of Supply - Contents	
Name, address and GSTIN of the supplier and recipient	A consecutive serial number
HSN code of goods and accounting Code of services	Date of its issue
Description, Total Value of goods or services along with any discount or abatement	Signature or digital signature of the supplier or his authorized representative

**Receipt Voucher and Refund Voucher [Rules 50 &51]**

A registered person shall, on receipt of any advance, issue a receipt voucher. However, after receipt of advance, if no supply is made subsequently and no tax invoice is issued in pursuance thereof, a refund voucher shall be issued against such payment.

Receipt Voucher (Contents)	Refund Voucher (Contents)
Name, address and GSTIN of the supplier and recipient	Name, address and GSTIN of the supplier and recipient
A consecutive serial number	A consecutive serial number
Date of its issue	Date of its issue
Description, Rate of Tax, Amount of tax	Description, Rate of Tax, Amount of refund made and tax on same
Amount of advance taken	Number and date of receipt voucher
Place of Supply	Place of Supply
Whether tax payable on RCM basis	Whether tax payable on RCM basis
Signature or digital signature of the supplier or his authorized representative	Signature or digital signature of the supplier or his authorized representative

**Invoice for purchase from unregistered persons**

Every registered person who is liable to pay tax under reverse charge basis shall issue an invoice in respect of goods or services received by him from an unregistered supplier on the date of receipt of goods or services.

**Payment Voucher in RCM [Rule 52]**

Every registered person who is liable to pay tax under reverse charge basis shall issue a payment voucher at the time of making payment to the supplier.

Payment Voucher (Contents)	
Name, address and GSTIN of the supplier and recipient	Rate of Tax, Amount of tax payable
A consecutive serial number not exceeding 16 Characters	Amount paid
Date of its issue	Place of Supply, name of state and its code
Description of Goods/ Services	Signature or digital signature of the supplier or his authorized representative

**Revised Tax Invoice and Debit or Credit note [Rule 53]**

**Revised invoice** shall be issued within one month from the date of issuance of certificate of registration, against invoices already issued during the interim period of effective date of registration till the date of issuance of certificate of registration.

**Debit note** shall be issued to recipient where taxable value or tax charged in the tax invoice is found to be less

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Credit note shall be issued to recipient in following cases:

- ✓ where taxable value or tax charged in the tax invoice is found to be in excess
- ✓ Goods are returned by the recipient
- ✓ Goods or services are found to be deficient

### Tax Invoice in Special cases [Rule 54]

(i) **ISD Invoice or ISD Credit note** issued by an Input service distributor should include the following:-

ISD Invoice / Credit Note - Contents	
Name, address and GSTIN of the Input Service Distributor	a consecutive serial number not exceeding 16 characters
Date of its issue	name, address and GSTIN of the supplier of common service and original invoice number whose credit is sought to be transferred
Taxable value, rate and amount of the credit to be transferred	signature or digital signature of the Input Service Distributor or his authorized representative

(ii) **For Insurer, Bank, Financial Institutions including NBFCs:** They may issue a consolidated tax invoice or any other document in lieu thereof, for the supply of services made during the month at the end of the month, whether issued or made available, physically or electronically whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as prescribed for tax invoice under rule 46.

(iii) **For Goods Transport Agency:** GTA shall issue tax invoice or any other document in lieu thereof, containing the gross weight of the consignment, name of the consignor and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency and also containing other information as per rule 46.

(iv) **For supplier of passenger transportation service:** A tax invoice shall include a ticket in any form, whether or not serially numbered, and whether or not containing the address of the recipient but containing other particulars as prescribed in rule 46.

### Furnishing of return

Every registered person, for every calendar month or part thereof shall furnish in such form and manner as may be prescribed, a return, electronically of inward and outward supply of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed on or before 20<sup>th</sup> day of the month succeeding such calendar month or part thereof.

The Return is required to be furnished for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

A registered person shall not be allowed to furnish the return for a tax period if the return for any of the previous tax periods has not been furnished by him.

### Types of returns in GST

Form	Description	Form	Description
GSTR 1	Details of outward supplies of goods or services	GSTR 6	Return for input service distributor

GSTR 2	Details of inward supplies of goods or services	GSTR 7	Return for Tax Deducted at Source
GSTR 3	Monthly return	GSTR 8	Statement for tax collection at source
GSTR 3B	Details of Outward supplies and Inward supplies liable to reverse charge	GSTR 9	Annual Return
GSTR 4	Quarterly return for registered person opting for composition levy	GSTR 10	Final return
GSTR 5	Return for Non-resident taxable person		

**Relevant supplies to/ by and their rate structure**

SI No	HSN Code	Particulars	CGST Rate	Condition
1	9954	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the {Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity} by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -</p> <p>(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.</p>	6	<p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be;</p>
2	9954	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p>	6	<p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be</p>

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		(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.		
3	9954	Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.	2.5	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be
4	9954	Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be
5	9954	Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	2.5	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.

6	9972	Services by the Central Government, State Government, Union territory or local authority to governmental authority or government entity, by way of lease of land	Nil	
7	9972	Supply of land or undivided share of land by way of lease or sub-lease where such supply is a part of composite supply of construction of flats, etc. specified in the entry in column (3), against serial number 3, at item (i); sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi) of Notification no. 11/2017-CT (rate) Provided that nothing contained in this entry shall apply to an amount charged for such lease and sub-lease in excess of one third of the total amount charged for the said composite supply. Total amount shall have the same meaning for the purpose of this proviso as given in paragraph 2 of this notification.	Nil	
8	9964	“(iva) Transportation of passengers, with or without accompanied baggage, by air, by non-scheduled air transport service or charter operations, engaged by specified organisations in respect of religious pilgrimage facilitated by the Government of India, under bilateral arrangement.  [Added vide notification no, 27/2018, Central tax (rate) dated 31.12.2018]	2.5	Provided that credit of input tax charged on goods used in supplying the service has not been taken [Please refer to clause (iv) of paragraph 4 relating to Explanation]”;

## Exemption for Supplies by Government

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Section 11(1) of the CGST Act 2017 empowers the Government to issue notifications on the recommendations of the Council to exempt, by notification, goods or services or both from the whole or part of the tax leviable thereon. By exercising the said powers, the government had issued Notification no. 12/2017-Central Tax(rate) dated 28<sup>th</sup> June 2017 and various other notifications for updating this notification to provide exemption in respect of certain services. The exempt services which are provided by the Government have been discussed below as per the Serial number mentioned in the said notification:

### **SI No. 4: Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution (Heading 99)**

The term Municipality has not been defined in the GST law. However, according to Section 2(69) of the CGST Act, 2017 the said term derives its meaning from clause (e) of the Article 243P of the Constitution of India. The said Article defines Municipality to mean an institution of self-government constituted under Article 243Q. As per Article 243Q, Municipality includes Nagar Panchayat in Transitional area, Municipal Council for smaller urban area and Municipal Corporation for larger urban area. The following are the powers specified under Article 243W of the Constitution of India which are entrusted to the Municipality:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and, commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry protection of the environment. and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, play-grounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle ponds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

Any services by the Government by way of activity in relation to the above functions entrusted to the municipality will be exempt in nature.

For instance, charges received by the Government for regulation of land use like conversion from residential to commercial purpose are exempt from payment of tax. Also, charges recovered by the Government for approval of sanction plan or license will also be exempt from payment of tax.

**Comparison with earlier law:** Entry no. 39 of the Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. For the purpose of explaining the exemptions relating to services by Government, the CBEC had issued Circular no. 192/02/2016-ST dated 13<sup>th</sup> April 2016 during the Service tax regime. Serial no. 7 of the said circular clarified the below:

SI No	Issue	Clarification
7	Services in the nature of change of land use, commercial building approval, utility services provided by Government or a local authority	Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are already exempt under Notification No. 25/2012 – ST dated 20.6.2012. The said services when provided by Government or a local authority have also been exempt from Service Tax vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 39 refers].

**SI No. 5: Services by Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution. [Heading 99]**

The meaning of Governmental authority has already been given in the chapter- 2: Legal Framework.

The term 'Panchayat' has not been defined in the CGST Act, 2017. However, Section 2(69) of the CGST Act which defines local authority states that the definition of Panchayat can be borrowed from clause (d) of Article 243 of the Constitution of India. It defines Panchayat to mean an institution of self-government of the rural area constituted under article 243B. As per Article 243B, there shall be constituted in every state, Panchayats at the village, intermediate and district levels.

Article 243G of the Constitution of India entrusts powers, authority and responsibilities to the Panchayat. The Constitution of India endows the Panchayat with such powers and authority to enable them to function as institution of self-government. Also, it allows enactment of laws for the devolution of powers and responsibilities upon Panchayat subject to certain conditions with respect to the following:

- (a) the preparation of plans for economic development and social justice
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule

The activities specified within the Eleventh Schedule are Agriculture, including agricultural extension; Land improvement, implementation of land reforms, land consolidation and soil conservation; Minor irrigation, water management and watershed development; Animal husbandry, dairying and poultry; Fisheries; Social forestry and farm forestry; Minor forest produce; Small scale industries, including food processing industries; Khadi, village and cottage industries; Rural housing; Drinking water; Fuel and fodder; Roads, culverts, bridges, ferries, waterways and other means of communication; Rural electrification, including distribution of electricity; Non-conventional energy sources; Poverty alleviation programme; Education, including primary and secondary schools; Technical training and vocational education; Adult and non-formal education; Libraries; Cultural activities; Markets and fairs; Health and sanitation, including hospitals, primary health centers and dispensaries; Family welfare; Women and child development; Social welfare, including welfare of the handicapped and mentally retarded; Welfare of the weaker sections, and in

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particular, of the Scheduled Castes and the Scheduled Tribes; Public distribution system; Maintenance of community assets.

For instance, the Government provides technical training/vocational education to farmers in relation to the function of Panchayat entrusted under Article 243G of the Constitution.

**Comparison with earlier law:** Entry no. 60 of the Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. For the purpose of explaining the exemptions relating to services by Government, the CBEC had issued Circular no. 192/02/2016-ST dated 13<sup>th</sup> April 2016 during the Service tax regime. Serial no. 7 of the said circular clarified as under:

SI No	Issue	Clarification
8	Services provided by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution	Such services have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 60 refers].

**SI No. 6: Services by the Central Government, State Government, Union territory or local authority excluding the following services-**

- (a) *services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;*
- (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. [Heading 99]*

Any of the services falling within (a) to (d) above will not be covered within the exemption provided in this entry. Apart from these clauses, any services provided by Central Government, State Government, Union Territory or local authority will be considered as exempt under this entry.

Clause (a) refers to various services by the Department of Post i.e. Post Offices. These services include speed post, express parcel post, life insurance and agency services.

Speed post refers to a guaranteed delivery of mail in a time bound manner. The charges are relatively more than that of normal post, inland letter, etc.

Express parcel post provides speedy and economical parcel services to corporates and business customers. Post office provides these services on a door to door basis.

Post office also offers life insurance services under two schemes – Postal Life Insurance and Rural Postal Life Insurance. Postal Life insurance is offered to employees of the Central and State Government, public sector undertakings, universities, government aided institutions, nationalized banks and financial institutions. These employees are allowed to insure their life on payment of fixed premium. Within the Rural Postal Life Insurance, the people of the rural areas are allowed to have insurance coverage on payment of lower premium under this scheme.

Post offices also provide agency services to many corporates. Due to their distribution network, these corporates pay commission to post offices for carrying out various tasks on their behalf. For instance, they collect payments on behalf of several power distribution companies.

Clause (b) refers to services in relation to an aircraft or vessel. These may be provided within or outside the precincts of port or airports. These include various services like maintenance of airport/ ports, air safety and traffic service, loading and unloading of goods and passengers, demurrage charges etc.

Clause (c) mentions about transportation services in respect of goods and passengers. These transportation services may be by any of the means like air, sea, road etc. Their taxability varies on the nature and purpose of transport. For instance, an air-conditioned contract carriage's taxability differs from that of a non-air-conditioned one. Also, there are State Transport Undertakings and goods carriages which provide services of transportation.

Finally, clause (d) is a residual provision which mentions about any services by the Government apart from the three clauses mentioned above. However, in order to fall within this clause, it is pertinent that the said services should be provided to a business entity. Any service provided to a non-business entity will not be covered by this clause.

Entry no. 6 essentially means that the services provided to non-business entities mentioned above apart from those mentioned in clause (a) to (c) will be considered as exempt.

**SI No. 7 Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to twenty lakh rupees (ten lakh rupees in case of a special category state) in the preceding financial year.**

**Explanation-** For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to-

- (a) services-
  - (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;
  - (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  - (iii) of transport of goods or passengers; and
- (b) services by way of renting of immovable property (*Chapter 99*)

Any services provided (except those services specified in clause (a) and (b) above) by the Central Government, State Government, Union territory or local authority to a business entity upto a certain threshold of turnover will be considered as exempt. This threshold is Rs. 20 lakhs in case of non-Special category states. However, the turnover threshold is Rs. 10 lakhs only in case of Special category states. It must be kept in mind here that the turnover which needs to be determined is of the preceding financial year. If the turnover in the current year is above the threshold limit though it was below the threshold in the preceding year, the exemption will still be applicable. This threshold is consistent with that declared for the purpose of registration of any business entity under GST. For requiring registration, the aggregate turnover of a business entity should be greater than Rs. 20 lakhs in a non-special category state and Rs. 10 lakhs in case of a Special Category state. The meaning of 'Special Category' is the same as stated in clause 4(g) of Article 279A of the Constitution of India. These states as specified in the said Article are Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Sikkim, Jammu & Kashmir, Himachal Pradesh and Uttarakhand.

Any of services falling within (a) and (b) will not be covered within the exemption provided in this entry. Apart from these clauses, any services provided by Central Government, State Government, Union Territory or local authority will be considered as exempt under this entry.

Reader may refer discussion at sl. No. 5 above for details on services in clause (a) above.

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Clause (b) mentions about renting of immovable property. Any such services provided by the Government to a business entity will not be covered within this exemption. Of course, such services to non-business entities will be considered as exempt and covered within the purview of entry no. 6. However, renting of immovable property provided to a business entity having a turnover of more than Rs. 20 lakhs will not be considered as exempt under this entry. Depending on the nature and use of the property, such renting of immovable property may be exempt under any other entry.

Apart from the above two clauses, all the services provided by the Government are exempt if provided to business entities having a turnover upto the given threshold limit.

**Comparison with the earlier law:** Entry no. 48 of the Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. The implication of the said exemption has remained the same from the Service tax regime to the GST regime.

**SI No. 8: Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority:**

**Provided that nothing contained in this entry shall apply to services-**

- (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;
- (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) of transport of goods or passengers. [*Heading 99*]

This exemption covers situations wherein services are provided by Government, Union territory or local authority to another Government, Union territory or local authority. This could mean services by any one of these to the other. It must be noted here that Governmental authority and Government entity are not part of this exemption. So services by Governmental authority to Government may be considered as taxable if not exempt under any other entry.

For example, sanction plan of a building of the Government is approved by the local authority upon following of the necessary application process. Here, the services are provided by local authority to the Government. Hence, it will be considered as exempt under this entry.

However, this exemption will exclude clauses (i) to (iii) mentioned above. This means that the services of the following nature provided between Government, local authority etc. will continue to remain taxable:-

Reader may refer discussion at sl. no. 5 above for details on services in clause (i) to (iii) above. Further, it may be mentioned that if air-conditioned government buses transport government employees, they do not fall within the exemption clause under the entry given above.

**Comparison with the earlier law:** Entry no. 54 of the Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. The implication of the said exemption has remained the same from the Service tax regime to the GST regime.

**SI No. 9: Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed five thousand rupees:**

**Provided that nothing contained in this entry shall apply to-**

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

- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers:

Provided further that in case where continuous supply of service, as defined in sub-section (33) of section 2 of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed five thousand rupees in a financial year.

Any services provided by Central Government, State Government, Union territory or local authority will be exempt provided the consideration charged by such authority is up to Rs. 5000. Of course, this exemption is subject to exemptions given under other entries. In the previous entries, it has already been mentioned that if services are provided by these entities to non-business entity or business entity upto a certain threshold of the turnover the same will be exempt. If services are provided to business entity above the threshold limit of the turnover in the preceding financial year, still these services will be considered as exempt provided the consideration charged by the Government against the services provided are lower than or equal to Rs. 5,000.

For instance, the Ministry of Corporate Affairs requires a company to file its returns in certain prescribed cases as mentioned in the Companies Act, 2013. On appointment of a Director, the company may have to file the form at the MCA portal against payment of fees of Rs. 500. Since, the consideration charged is lower than Rs. 5000, it will be considered as exempt in nature.

However, if the same company proposes to increase the authorized capital, it may need to file prescribed form through the MCA portal. Let us say, these charges amount to Rs. 25,000. Since these charges exceed Rs. 5,000, they will not fall within the exemption entry as given here.

In case of continuous supply of services, the consideration charged should not exceed Rs. 5000 in a financial year. It must be remembered here that Rs. 5000 is not to be determined for each point of supply. This means that even if the value of supply in case of continuous supply of services for each time of supply is less than Rs. 5000 but exceeds Rs. 5000 in a financial year, all such supplies at each time of supply will become taxable.

For example, the Government provides services of renting of immovable property to a business entity at Rs. 4000 per month for 1 year. This is a continuous supply of service. This service will become taxable as the total consideration exceeds Rs. 5000 in a financial year even though the value of the monthly supply is Rs. 4000 only.

However, this exemption will exclude clauses (i) to (iii) mentioned above. This means that the services of the following nature provided by Government, local authority etc. will continue to remain taxable even though the consideration is below Rs. 5000:

Reader may refer discussion at sl. no. 5 above for details on services in clause (i) to (iii) above. Further, it may be mentioned that if air-conditioned government buses transports passengers for Rs.500 between two cities, it will continue to remain taxable.

**Comparison with the earlier law:** Entry no. 56 of the Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. The implication of the said exemption has remained the same from the Service tax regime to the GST regime.

**SI No. 9C: Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants. [Heading 99]**

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The terms Government entity, Central Government, State Government, Union Territory and local authority have been defined in Chapter 1 of this Guidance Note.

A number of Government entities are not having adequate source of funds for their functioning. For their functioning, the Government may have to provide grants. These grants may be for meeting the administrative expenses, payment to employees, rental etc. Not only this, even for any major capital expenditure by the Government entities, the Government may be providing grants. These grants if provided to a Government entity will amount to services being provided by the person giving the grant. These grants have been considered as exempt irrespective of the fact whether such grant is revenue or capital in nature.

**SI No. 41: Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.**  
*[Heading 9972]*

The government provides industrial plots or plots for development of infrastructure for financial businesses on lease basis. This exemption will be applicable if the lease period is long exceeding 30 years. State Governments Industrial Development Corporations which own these plots are engaged in providing these plots for the purpose of development of industry/infrastructure. So, the following objectives need to be fulfilled in order to qualify for exemption:

- (a) Services are by way of granting of long term lease of thirty years or more
- (b) The plots are provided on lease by the State Government Industrial Development Corporation or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union territory
- (c) The plots are industrial plots or plots for development of infrastructure for financial business
- (d) These plots are provided to the industrial units or the developers in any industrial or financial business area
- (e) The payment is by way of upfront premium by whatever name called

So, the exemption will not be applicable if any of the conditions are contravened. This means that in the following situations the exemption will not be available:

- (a) The period of lease is less than 30 years
- (b) The plots have been provided by any entity other than the State Government Industrial Development Corporation or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union territory
- (c) The plots are provided for residential purposes or any other unauthorized purpose
- (d) The plots are provided to any person other than for industrial or authorized financial purpose

For example, Greater Noida Industrial Development Authority provides land on long term lease to various industrial units for setting up their industrial parks. This will be considered as exempt

Also, Gujarat Government is setting up Gujarat International Finance Techcity (GIFT) for growth of the financial sector in the area. For this purpose, any land provided to any financial business entity on long term lease basis will be considered as exempt in this entry.

**SI No. 42: Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be. [Heading 9973 or 9991]**

Telecom service providers in order to enable themselves to provide services have to obtain license for using the radio frequency spectrum for carriage of data or voice. The Government holds the license to such spectrum. These licenses are auctioned by the Government and the highest bidder gets the license for usage of the spectrum on payment of the fees against such license. The payment of license fees can be made either upfront or in instalments as agreed between the Government and the telecom service provider. The time of supply may arise at a date which is later than the actual date of grant of license depending on when the instalment becomes due. All licenses granted after 1<sup>st</sup> April 2016, have been rendered taxable. As and when the instalment is due/ received, the tax is needed to be paid. However, it may happen that the license was granted to the telecom service provider before 1<sup>st</sup> April 2016 but the payment is being received in instalments after that date. Payments against this supply wherein the time of supply of these payments arises after 1<sup>st</sup> April 2016 have been considered as taxable. This exemption is continuing from the Service tax regime. The government did not wish to render the service taxable from a retrospective date. So, it started taxing all licenses granted only after 1<sup>st</sup> April 2016. But, any license granted before 1<sup>st</sup> April 2016 will be exempt even though the time of supply arises during the GST regime.

**Comparison with earlier law:** Entry no. 61 of the Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. For the purpose of explaining the exemptions relating to services by Government, the CBEC had issued Circular no. 192/02/2016-ST dated 13<sup>th</sup> April 2016 during the Service tax regime. Serial no. 9 of the said circular clarified the below:

SI No	Issue	Clarification
9	Whether Service Tax is payable on yearly instalments due after 1.4.2016 in respect of spectrum assigned before 1.4.2016	Service Tax is payable on such instalments in view of rule 7 of Point of Taxation Rules, 2011 as amended by vide Notification No. 24/2016 – ST dated 13.4.2016. However, the same have been specifically exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 61 refers]. The exemption shall apply only to Service Tax payable on one time charge, payable in full upfront or in instalments, for assignment of right to use any natural resource and not to any periodic payment required to be made by the assignee, such as Spectrum User Charges, license fee in respect of spectrum, or monthly payments with respect to the coal extracted from the coal mine or royalty payable on extracted coal which shall be taxable

**SI No. 47: Services provided by the Central Government, State Government, Union territory or local authority by way of-**

- (a) registration required under any law for the time being in force;
- (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force. [Heading 9983 or 9991]

There are many laws under which the Government provides registration services. The first part of this entry allows exemption to any person who obtains registration under any statute. The registration may be

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required to be provided by the Central Government, State Government, Union territory or local authority. Any fee that is required to be paid to the Government to obtain such registration under any of the laws, will be considered as exempt.

For instance, a company which wants to get patent on its products, applies for registration under the Patents Act. This registration will be granted upon payment of requisite fees to the Government. This fee paid to the government for the purpose of registration under the Act will be considered as exempt. This does not mean that the fees paid every year for the purpose of renewal will also be considered as exempt. This is because the fees paid at the inception will be for registration which has only been exempted. Any subsequent annual payment will not be for the purpose of registration and hence will not qualify for exemption under this entry.

Also, a company or LLP while registering itself with the Ministry of Corporate Affairs has to pay incorporation fees to the ROC. This fee will be exempt as it is for the registration of the company/ LLP under the respective acts. However, any fees paid by these entities for their annual filing with the ROC will not be exempt as such fees will not be for the purpose of registration.

The second part of the exemption deals with testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force. There are various laws which need to be complied with for ensuring the protection or safety of the workers, for instance, a restaurant needs to obtain food license to commence its operations. Any service such as testing, inspection etc. carried out for granting of the license is therefore exempt under the given entry.

**Comparison with earlier law:** Entry no. 58 of Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. For the purpose of explaining the exemptions relating to services by Government, the CBEC had issued Circular no. 192/02/2016-ST dated 13<sup>th</sup> April 2016 during the Service tax regime. Serial no. 5 of the said circular stated the below:

SI No	Issue	Clarification
5	Services provided in lieu of fee charged by Government or a local authority.	However, services provided by the Government or a local authority by way of: (i) registration required under the law; (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under the law, have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 58]

**SI No. 61: Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate. [Heading 9991]**

The Government mandates issuance of certain documents for the performance of certain functions. The documents specified for this purpose under this entry are restrictive. The exemptions are applicable only in respect of the following documents specified by the entry. The documents mentioned as per the said entry are:

- (a) Passport
- (b) Visa
- (c) Driving license
- (d) Birth certificate

(e) Death certificate

Passport is issued in the name of an individual for allowing him to travel to other countries.

Visa is for regulating entry of foreign nationals for their country and thereby the same needs to be applied for visiting that country.

Driving license is issued under the Motor Vehicles Act 1988. It allows the holder of the license to drive the specified class of vehicles within India.

Birth and Death Certificates are issued by Municipal Authorities as evidences for the birth and death of a person.

All the documents mentioned above are issued against certain fees which is required to be paid to the Government. This application fees in respect of these documents amounts to fees for services provided by the Government and will be considered as exempt in nature.

**Comparison with earlier law:** Entry no. 55 of the Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. For the purpose of explaining the exemptions relating to services by Government, the CBEC had issued Circular no. 192/02/2016-ST dated 13<sup>th</sup> April 2016 during the Service tax regime. Serial no. 2 of the said circular stated the below:

SI No	Issue	Clarification
2	Services provided by Government or a local authority to an individual who may be carrying out a profession or business	Services by way of grant of passport, visa, driving license, birth or death certificates have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 55]

**SI No. 62: Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract. [Heading 9991 or 9997]**

Any contract with the Government requires adherence to the time lines as per the contract. Any delay in the performance of the contract requires payment of money in the form of fines and liquidated damages. Usually while making the payment of the contract value by the Government, they deduct such liquidated damages or fines from the total bill value. This payment of liquidated damages amounts to agreeing to tolerate an act. It has already been stated in Schedule II of the CGST Act 2017 that it amounts to supply of services. So, there are two supplies which are usually provided – first the original supply wherein the contractor supplies the contracted services to the Government and the second wherein the government agrees to tolerate the act of the contractor if there is a delay in the contract. The classification of and rate in respect of the first part of the contract depends on the nature of the contract and recipient. This entry speaks about the second supply i.e. by the Government to the contractor. This toleration of act by the government on realisation of liquidated damages or fines is exempt under this entry.

**Comparison with earlier law:** Entry no. 57 of the Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. For the purpose of explaining the exemptions relating to services by Government, the CBEC had issued Circular no. 192/02/2016-ST dated 13<sup>th</sup> April 2016 during the Service tax regime. Serial no. 2 of the said circular stated the below:

SI No	Issue	Clarification
2	Service Tax on fines and	Fines and liquidated damages payable to Government or a local authority for non-performance of contract entered into

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	penalties.	with Government or local authority have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 57].
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**SI No. 63: Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products [Heading 9991]**

The right to natural resources belongs to the Government on the property owned by it. However, the Government or local authority may allow the assignment of the right to use natural resources to the farmers on payment of certain fees in the form of royalty. These rights to natural resources may be in the form of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products. The fees may be payable one time or on a running basis based on the use of resources and nature of contract. In each of the nature of the payments to the Government for the usage of resources, the services provided by the Government will be considered as exempt.

**Comparison with earlier law:** Entry no. 59 of the Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. For the purpose of explaining the exemptions relating to services by Government, the CBEC had issued Circular no. 192/02/2016-ST dated 13<sup>th</sup> April 2016 during the Service tax regime. Serial no. 2 of the said circular stated the below:

SI No	Issue	Clarification
2	Services in the nature of allocation of natural resources by Government or a local authority to individual farmers.	Services by way of allocation of natural resources to an individual farmer for the purposes of agriculture have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 59]. Such allocations/auctions to categories of persons other than individual farmers would be leviable to Service Tax

**SI No. 64: Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016:**

**Provided that the exemption shall apply only to tax payable on one time charge payable, in full upfront or in instalments, for assignment of right to use such natural resource. [Heading 9991 or 9973]**

Any person who wishes to use the natural resources which belong to the Government needs to apply for the assignment of the right to use such sources to the Government. The Government holds the right to such natural resources. Against the payment of royalty to the Government, the right to use is assigned by the Government. These licenses may be auctioned by the Government and the highest bidder may get the right for usage on payment of the fees. The payment of such fees can be made either upfront or in instalments as agreed between the Government and the service provider. The time of supply may arise at a date which is later than the actual date of assignment of right based on when the instalment becomes due. If any right is granted after 1<sup>st</sup> April 2016, it has been rendered as taxable. As and when the instalment is due/received, the tax is needed to be paid. However, it may happen that the natural resource was assigned to

the user before 1<sup>st</sup> April 2016 but the payment is being received in instalments after that date. Any payment against this supply wherein the time of supply of these payments arises after 1<sup>st</sup> April 2016 has been considered as taxable. This exemption is continuing from the Service tax regime. The government did not wish to render the service taxable from a retrospective date. So, it started taxing all assignments of natural resources made only after 1<sup>st</sup> April 2016. But, any assignment of natural resource before 1<sup>st</sup> April 2016 will be exempt even though the time of supply arises during the GST regime.

**Comparison with earlier law:** Entry no. 61 of the Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. For the purpose of explaining the exemptions relating to services by Government, the CBEC had issued Circular no. 192/02/2016-ST dated 13<sup>th</sup> April 2016 during the Service tax regime. Serial no. 10 of the said circular stated the below:

SI No	Issue	Clarification
2	When does the liability to pay Service Tax arise upon assignment of right to use natural resource where the payment of auction price is made in 10 (or any number of) yearly (or periodic) instalments under deferred payment option for rights assigned after 1.4.2016	<p>Rule 7 of the Point of Taxation Rules, 2011 has been amended vide Notification No. 24/2016 – ST dated 13.4.2016 to provide that in case of services provided by Government or a local authority to any business entity, the point of taxation shall be the earlier of the dates on which:</p> <p>(a) any payment, part or full, in respect of such service becomes due, as indicated in the invoice, bill, challan, or any other document issued by Government or a local authority demanding such payment; or (b) such payment is made.</p> <p>Thus, the point of taxation in case of the services of the assignment of right to use natural resources by the Government to a business entity shall be the date on which any payment, including deferred payments, in respect of such assignment becomes due or when such payment is made, whichever is earlier. Therefore, if the assignee/allottee opts for full upfront payment then Service Tax would be payable on the full value upfront. However, if the assignee opts for part upfront and remainder under deferred payment option, then Service Tax would be payable as and when the payments are due or made, whichever is earlier</p>

**SI No. 65: Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges. [Heading 9991]**

The services of Government in relation to import export cargo may extend beyond the office hours. For facilitation of trade and industry, the officers may have to work on holidays or overtime after office hours. Usually the import export cargo involves inspection or container stuffing or other duties. For this working, these officers are paid overtime charges known as Merchant Overtime charges in general parlance. This entry allows exemption to such Merchant Overtime charges paid by the Government when deputing officers beyond the office hours or on holidays.

**Comparison with the earlier law:** Entry no. 63 of the Notification no. 25/2012 dated 20<sup>th</sup> June 2012 also contained the said exemption. The implication of the said exemption has remained the same from the Service tax regime to the GST regime.

## Exemption for Supplies to Government

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Section 11(1) of the CGST Act, 2017 empowers the Government to issue notifications on the recommendation of the Council to exempt, by notification, goods or services or both from the whole or part of the tax leviable thereon. By exercising the said powers, the government had issued Notification no. 12/2017-Central Tax(rate) dated 28<sup>th</sup> June 2017 and various notifications for updating of the given notification to provide exemption in respect of certain services. The services which are provided to the Government have been discussed below as per the Serial number mentioned in the said notification:

**SI No. 3: Pure services (excluding works contract service or other composite supplies involving supply of any goods) 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 (*Heading 99*)**

Here the meaning of 'pure services' should be clearly understood. 'Works contract' has been defined under the law to infer those supplies which involve transfer of property in goods along with that of provision of services in case of immovable property. In case of movable property, supply of two or more taxable supplies of goods or services or any combination thereof refers to a composite supply on satisfaction of certain conditions. Where there is an involvement of works contract or composite supply involving supply of goods, it cannot be called as pure services. Pure Services will only be those activities wherein there is a supply of service or a composite supply and no part of such supply involves supply of goods.

The meanings of each of the terms 'Central Government', 'State Government', 'Union territory', 'local authority', 'Governmental authority' and 'Government entity' have already been given within the legal framework above.

The term 'Panchayat' has not defined in the CGST Act 2017. However, Section 2(69) of the CGST Act which defines local authority states that the definition of Panchayat can be borrowed from clause (d) of Article 243 of the Constitution of India which defines 'Panchayat' to mean an institution of self-government constituted under article 243B of the rural area. As per Article 243B, there shall be constituted in every state, Panchayats at the village, intermediate and district levels. The functions of the Panchayat as given under Article 243G have already been described above.

The term Municipality has not been defined in the GST law either. However, the said term derives its meaning from clause (e) of Article 243P of the Constitution of India as per the definition of local authority given under Section 2(69) of the CGST Act 2017. The said article defines Municipality to mean an institution of self-government constituted under Article 243Q. As per Article 243Q, Municipality includes Nagar Panchayat in Transitional area, Municipal Council for smaller urban area and Municipal Corporation for larger urban area. The following are the powers specified under Article 243W of the Constitution of India which are entrusted to the Municipality:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and, commercial purposes.

6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, play-grounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle ponds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

Thus, any services provided to the persons stated above in the form of any functions entrusted to a Panchayat or Municipality as given under the relevant articles of the Constitution of India will be considered as exempt under this Entry.

**SI. No. 16: 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 regional connectivity scheme airport, against consideration in the form of viability gap funding:**

**Provided that nothing contained in this entry shall apply on or after the expiry of a period of three years from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation. (Heading 9964)**

The Ministry of Civil Aviation had notified the Regional Connectivity Scheme for easier access to airports in the smaller cities. Its main object was to stimulate the regional connectivity to these smaller cities. For making access to these places more affordable, the Government provides funding to the operator. This is called as viability gap funding. It is provided to ensure that the operators are able to meet the relevant losses of operating through these cities by paying the differential between the expenses of such operator and their income through such connectivity. Any services by way of this viability gap funding by the Central Government to enable transport of passengers from such airports will be considered as exempt. However, it has been specified that this exemption will apply for a period of three years from the date of commencement of operations at the regional connectivity airport. After this time period, the exemption will cease to exist.

**SI No. 21B: Services provided by a goods transport agency, by way of transport of goods in a goods carriage to-**

- (a) a Department or Establishment of the Central Government or State Government or Union territory; or
- (b) local authority; or
- (c) Governmental agencies,

which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under Section 51 and not for making a taxable supply of goods or services. *[Heading 9965 or Heading 9967]*

Government Departments which have taken registration only for the purpose of deducting tax at source and are not engaged in any taxable supplies, and procures services of goods transportation agencies have been exempted vide notification no. 28/2018, Central Tax rate dated 31.12.2018. Accordingly, services of goods transportation agencies will be exempted if provided to the government which is registered only for the purpose of deduction of Tax at source.

Further, it may also be noted that reverse charge shall also not be applicable in the given case as notified vide notification no.29/2018 Central Tax rate dated 31.12.2018.

**SI No. 40: Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory. *(Heading 9971 or Heading 9991)***

The meanings of the terms Central Government, State Government, Union territory etc. have already been given in the chapter legal framework.

The Government may undertake to pay the total premium in respect of any insurance scheme on behalf of a person. For instance, this may involve payment of insurance premium in respect of the employees of the Central Government, State Government, Union territory etc. The government may provide perquisites to its employees in the form of payment of the insurance premium on behalf of the employees. However, the said entry will not cover insurance schemes which are managed by the Government itself. For such services provided by the Government, entry no. 6 of notification no. 12/2017-Central Tax (rate) will be applicable. However, it must be remembered here that this entry is not applicable only in case of premium paid on behalf of employees. Full premium on behalf of any other person by the Central Government, State Government, Union territory etc. in respect of any insurance scheme other than those managed by the Government will be covered here. Also, it must be kept in mind that only if the total premium is paid by the Government, this entry will be attracted. If even a part of the premium is paid by the relevant policyholder or any other person, the entire contribution by the Government in respect of the said insurance scheme will become taxable.

**SI No 72: Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration. *(Heading 9992)***

Various schemes have been launched by the Ministry of Skill Development & Entrepreneurship (MSDE) for training and development of relevant skills. The training cost of these schemes, are completely borne by the Government.

Pradhan Mantri Kaushal Vikas Yojana (PMKVY) is the flagship scheme of the Ministry of Skill Development & Entrepreneurship (MSDE). The objective of this Skill Certification Scheme is to enable a large number of Indian youth to take up industry-relevant skill training that will help them in securing a better livelihood. Individuals with prior learning experience or skills will also be assessed and certified under Recognition of Prior Learning (RPL). Under this Scheme, Training and Assessment fees are paid by the Government.

The said Ministry has launched various schemes to achieve the objective of National Skill Development. Some of these schemes include Udaan, Sankalp, Star etc. In the said schemes, the relevant skills of the trainees are nurtured for enhancement of their employability. Not only this, the entrepreneurship development schemes are also in vogue to educate and equip potential and early stage entrepreneurs across the country.

All the above-mentioned schemes are sponsored by the Government. The entire training cost is borne by the Government. The persons providing the training also receives their fees from the Government. Such fees paid by the Government, is exempt.

However, it must be kept in mind here that the total expenditure of the said programme should be borne by the Government. Any training programme wherein a part of the training expenditure is sponsored by the Government, will not qualify for the exemption. The full expenditure in respect of the said training should be borne by the Government.

For instance, Udaan is a Special Industry Initiative for Jammu & Kashmir in the nature of partnership between the corporates of India and the Ministry of Home Affairs and implemented by National Skill Development Corporation. The programme aims to provide skills training and enhance the employability of unemployed youth of J&K. The Scheme covers graduates, post graduates and three-year engineering diploma holders. It has following two objectives:

- (i) To provide an exposure to the unemployed graduates to the best Corporates India;
- (ii) To provide Corporate India, an exposure to the rich talent pool available in the State.

The Scheme aims to cover 40,000 youth of J&K over a period of five years and Rs. 750 crore has been earmarked for implementation of the scheme over a period of five years to cover other incidental expenses such as travel cost, boarding and lodging, stipend and travel and medical insurance cost for the trainees and administration cost. Further corporates are eligible for partial reimbursement of training expense incurred for the candidates who have been offered jobs.

All the costs borne by the Government above as part of this initiative of Udaan will be considered as exempt in the hands of the person providing such services to the Government.

**SI No. 11A. Service provided by Fair Price Shops to Central Government by way of sale of wheat, rice and coarse grains under Public Distribution System(PDS) against consideration in the form of commission or margin. (Heading 9961 or 9962)**

These entries have been introduced vide Notification no. 21/2017-Central Tax (rate) dated 22<sup>nd</sup> August 2017.

The Public distribution system (PDS) is an Indian food Security System for the poor people established by the Government of India under the Ministry of Consumer Affairs, Food, and Public Distribution. While the Central government is responsible for procurement, storage, transportation, and bulk allocation of food grains, the State governments hold the responsibility for distributing the same to the consumers through the established network of approximately five lakh Fair Price Shops. Major commodities distributed include wheat, rice, sugar, and kerosene.

The ideology behind having this system was allowing the access of necessities to the poor at a price lower than the market price called as issue price. The fair price shops sell these goods to the poor against ration cards. These shops are operated throughout the country by joint assistance of central and state governments. Ration shops are now present in most localities, villages, towns and cities.

The main objectives of the public distribution system are:

- (a) Removal of hunger and starvation
- (b) Availability of essential products at reasonably affordable prices to the card holders
- (c) Safeguard inflationary effects of the essential products on to the card holders
- (d) Reduction of any nutritional deficiency by providing the essential commodities
- (e) Adequate quantity is provided at the right time every month to the card holder with easy accessibility

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The fair price shop owners are allocated quantum of wheat, rice and coarse grains for sale depending upon the number of ration cards registered in his shop. He procures wheat, rice etc. from the Government and sells the same to the ration card holders. Since, these shops provide goods at a much lower price to the poor, they in turn get adequately compensated against such provision from the Government. This compensation is usually in the form of commission or margin. Margin means that the difference between the selling price and the purchase price, which is paid by the Government. The fair price shops earning income from the Government on commission or margin basis are not required to pay taxes as the said service is exempt from tax.

However, it must be noted here that the fair price shops may be indulging in selling of goods other than those specified for the public distribution system. There may not be any restriction on such fair price shops to only sell wheat, rice and coarse grains which are specified under the public distribution system. On selling of other goods, if the fair price shops earn any commission or margin from the Government, such income will not be exempted from GST. This is because the exemption entry clearly specifies that only services provided by Fair price shops to Central Government by way of sale of wheat, rice and coarse grains under Public Distribution System (PDS) wherein the consideration is in the form of commission or margin are exempted. Any other goods supplied whereby the commission or margin is earned by the fair price shops will continue to remain taxable.

### **SI No. 51: Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax. [Heading 9984]**

GSTN is an entity created for providing the infrastructural support for the working of GST. It is a Section 8 non-profit company registered under the Companies Act, 2013. It provides IT infrastructure and related services to the Central and State Governments for the implementation of GST. It integrates the GST portal provided to the taxpayers and connects with the IT systems of the tax administration. It has both front end and back end operations. The portal visible to the taxpayers operates as the front-end part of the IT infrastructure. The data submitted by the taxpayers is made available to the administrative authorities for their back-end processing. Thus, the GSTN is engaged in providing services to the Government. Its various functions include:

- (a) Facilitating registration
- (b) Enabling filing of returns by taxpayers and forwarding of such returns to the tax authorities
- (c) Computation and settlement of IGST between the Central and State authorities
- (d) Matching of data provided by the supplier and recipient
- (e) Confirmation of the tax payment by interaction with the banking network
- (f) Providing various MIS reports to the tax authorities on need basis
- (g) Profiling and giving compliance rating to taxpayers

All these functions carried out by GSTN are considered as services provided by GSTN to the Government and will be considered as exempt.

### **SI No. 45: Services provided by-**

- (a) an arbitral tribunal to –
- (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;
- (b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-

- (iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;
- (c) a senior advocate by way of legal services to-
- (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government entity [Heading 9982 or 9991]

*The given services have been exempted vide notification no. 2/2018 CTR dated 25.01.2018*

An arbitral tribunal (or arbitration tribunal) is a panel with one or more adjudicators which is convened and sits to resolve a dispute by way of arbitration. This process of arbitration may involve one of the parties as the Central Government, State Government, Union territory, local authority, Governmental Authority or Government entity. In this situation, the services provided by arbitral tribunal to these entities will be considered as exempt.

Also, any legal services provided by any advocate, senior advocate or a firm of advocates to the Central Government, State Government, Union territory, local authority, Governmental Authority or Government entity will be considered as exempt. These legal services may include legal consultancy in any branch of law, representational services in any Court of law or tribunal etc. Hence all kinds of legal services to these entities have been exempted.

#### **Withdrawal of exemptions from Service tax regime**

Following exemptions have been withdrawn during the GST regime vis a vis Mega Exemption Notification no. 25/2012-ST dated 20<sup>th</sup> June 2012 during the Service tax regime:

1. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—
  - (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
  - (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
  - (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65B of the said Act; Under a contract which had been entered into prior to 1<sup>st</sup> March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

Provided that nothing contained in this entry shall apply on or after the 1st April, 2020;

2. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—
  - (i) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
  - ii) canal, dam or other irrigation works;
  - iii) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
3. Services provided to Government, a local authority or a governmental authority by way of—

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- (a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or
  - (b) repair or maintenance of a vessel;
4. Services received from a provider of service located in a non-taxable territory by Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession.

## Time of Supply

All supplies made to Government has to be segregated into supply of goods and supply of services.

Time of supply for both are somewhat different and hence they need to be segregated. In case it is a composite supply or mixed supply, in terms of section 8 of CGST Act, the supplies will be segregated between goods and services.

Most of the project would involve supply of goods along with services and vice versa. Schedule II of CGST Act has clearly demarcated the supply of goods and supply of services.

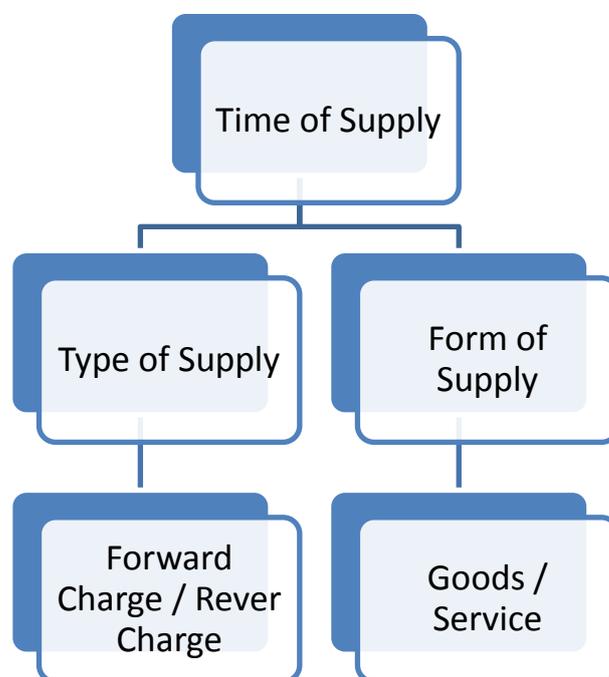
### What is the Relevance of Time of Supply

Having understood whether a transaction is supply or not and whether it's a supply of goods or service, it is really important to understand as to when the levy of GST shall be deemed to have occurred and when liability to pay tax to the Government arises.

One common myth in the Government projects, especially the works contract is that the work is going on continuously, as and when Government releases the money that is when the taxes are also due to government with respect to GST.

Hence, it is equally important for the contractors to know and understand as to when the liability arises. Also, there is a common myth that liability to taxation arises only when an invoice is raised and hence the invoice be raised only when the money is received or reasonable certainty of receipt is established.

Time of supply could be determined by considering the following chart:



Since the contracts with Government are of Long duration, there is also a necessity to check whether such contract is continuous in Nature.

Let us understand what a continuous supply is:

“Continuous supply of goods” as defined in 2(32) means

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- Supply of goods which is provided or will be provided
- Continuously or on recurrent basis
- Under a contract
- through the means of a wire, cable, pipeline or other conduit
- The supplier sends invoice to the recipient on a periodic basis

E.g. Supplying bricks to builders is a continuous supply of goods because there will be periodic supply for a long time.

Electricity is supplied through wire/cable. Liquids like water, petrol are supplied through pipeline. These products will be considered as continuous supply of goods.

Against supply of goods, Invoice can be raised weekly, monthly, quarterly or so, as per the terms of the contracts.

“Continuous supply of service” is defined in section 2(33) to mean:

- Services provided or agreed to be provided
- Continuously or on recurrent basis for **period exceeding 3 months**
- Under a contract – It can be oral/written contract
- With periodic payment obligation – Milestone basis, monthly/quarterly basis.
- Certain supplies deemed to be continuous supplies – Govt. can notify certain services.

E.g. Telecom operator provides services 24X7, these services are supplied on recurrent basis.

### Time of Supply

1. In case the supply is of goods under forward charge, then

A. The time of **supply of goods** shall be the earlier of the following dates, namely: —

- (a) the date of issue of invoice by the supplier; or
- (b) the last date on which he is required to issue the invoice under section 31(1); or
- (c) the date on which the supplier receives the payment

B. The time of supply in case of *continuous supply of goods* shall be as under:

When there are successive statements of accounts/successive payments involved and the invoices are issued before or at the time of issue of each statement, the time of supply shall be the time of receipt of each such payment.

2. In case tax is paid or liable to be paid on reverse charge basis, the time of supply of goods shall be the earliest of the following dates, namely: —

- (a) the date of the receipt of goods; or
- (b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (c) the date immediately following thirty days from the date of issue of invoice

Where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c) above, the time of supply shall be the date of entry in the books of account of the recipient of supply.

3. In case of services

- A. The time of *supply of services* shall be the earliest of the following dates, namely: —
- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31(2) or the date of receipt of payment, whichever is earlier; or
  - (b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31(2) or the date of receipt of payment, whichever is earlier;

Where it is not possible to determine the time of supply of services, in accordance with clause (a) or clause (b) as mentioned above, the time of supply shall be the date, on which the recipient shows the receipt of services in his books of account.

- B. The time of supply in case continuous supply of services:

- When the due date of payment can be identified from the contract

The invoice will be issued before or after the payment is to be made by the recipient but within the specified time\*\*.

Invoice will be issued, whether or not any payment has been received by the supplier.

The time of supply in such case shall be the date of issue of Invoice or date payment, whichever is earlier.

- When the due date of payment cannot be identified from the contract

The invoice shall be issued before or after each time when the supplier of service receives the payment but within specified time\*\*.

The time of supply in such case shall be the date of issue of Invoice or date of payment, whichever is earlier.

- When the payment is linked to the completion of an event

The invoice shall be issued before or after the time of completion of that event but within the specified time\*\*.

The time of supply in such case shall be the date of issue of Invoice or date of payment, whichever is earlier.

- When the supply of services ceases under a contract before the completion of the supply

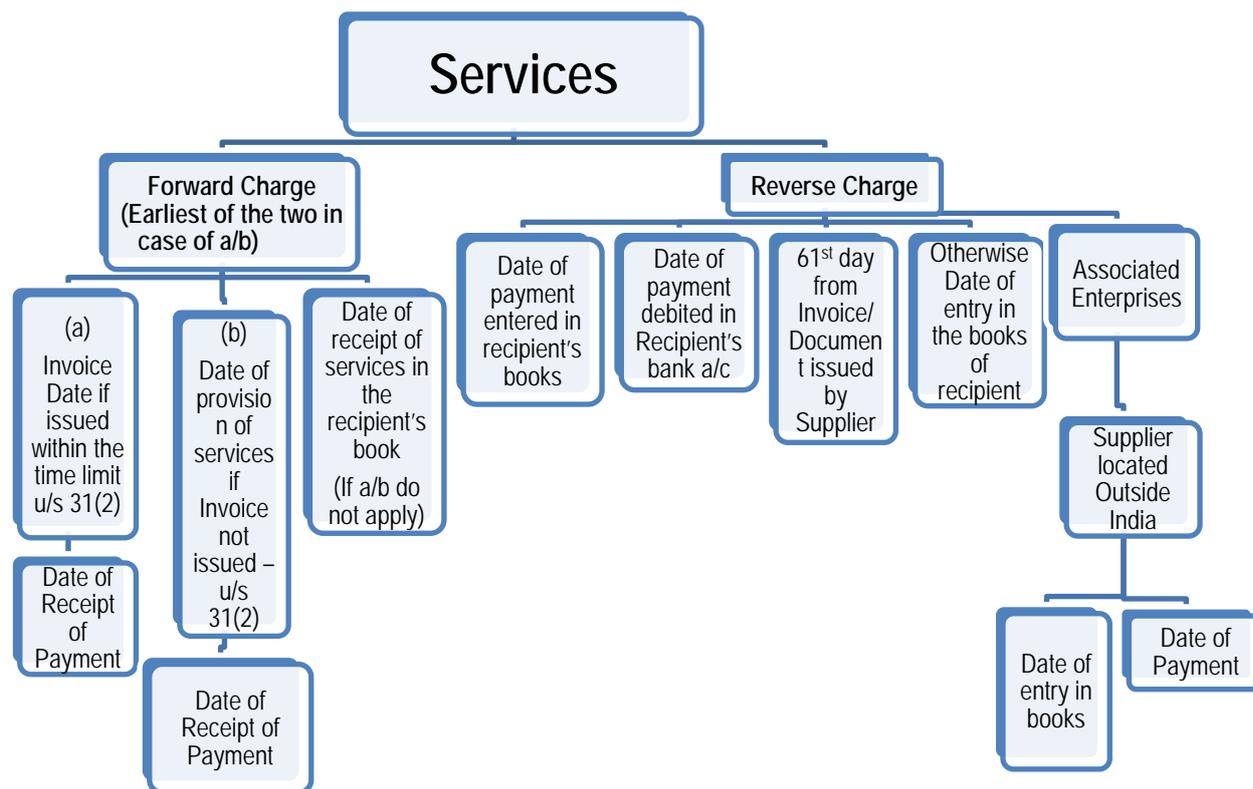
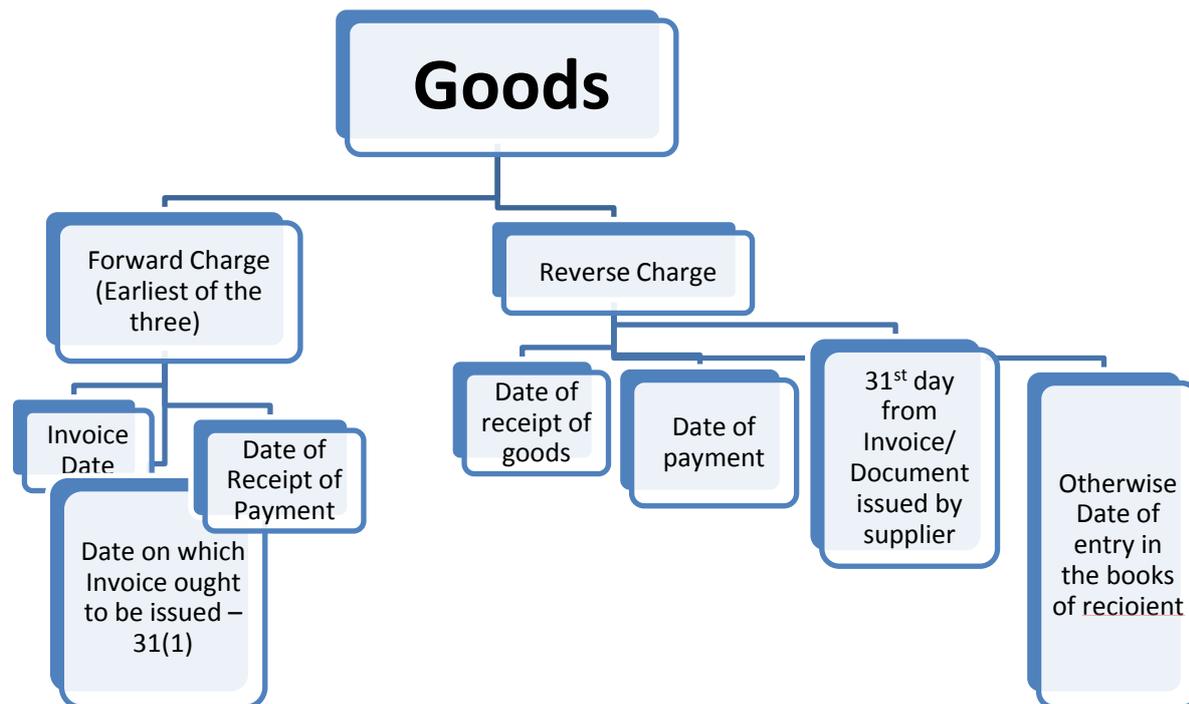
The invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the service provided before stopping.

The time of supply in such case shall be the date of issue of Invoice or the date of payment, whichever is earlier.

**\*\*Specified Time**

The invoice must be issued within 30 days from the date when each event, specified in the contract and requiring the recipient to make any payment, is completed.

All the above-mentioned provisions can be depicted thus:



## Value of Supply

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After understanding when the tax liability has to be discharged, it is necessary to ascertain as to on what value such tax has to be discharged.

In government contracts, there are several re-imburements and out of pocket expenses incurred; there is a common myth that taxes need to be paid on the net value of the services. For instance, in a road contract, there is utilization of Petrol /Diesel for vehicles or some temporary engineers are hired or Accommodation and Transportation services provided for officers and All/some of these form part of the contract or claimed additionally at times. Irrespective of the fact that there are indirect works which are involved and those are carried out and cost recovered from the government, would also be under the purview of the GST and there shall be taxes levied on them too.

Hence, the value of supply of goods or services or both shall be the transaction value i.e. price paid or payable for the said supply, subject to the following conditions:

1. Supplier and recipient are not related persons; and
2. Price is the sole consideration for such supply

If the above two conditions are satisfied, the value of supply shall be the transaction value.

Simply stated Transaction value means the price actually paid or payable for the supply of goods or services or both, where the supplier and the recipient of the supply are not related and the price is the sole consideration for such supply. In most of the cases the normal business practice is that, the invoice value will be the taxable value.

Applicability of transaction value – if the assessee supplies goods or services or both to unrelated person and the price is the sole consideration for supply, then the transaction value will be the value of the supply.

The value of supply shall include –

- (a) Any taxes, duties, cess, fees and charges levied under any law for the time being in force other than those leviable under GST law.
- (b) Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price paid or payable for the goods or services or both.
- (c) Incidental expenses, including commission and packing charges, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services.
- (d) Interest or late fee or penalty for delayed payment of any consideration for supply.
- (e) Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. Suppliers who receive subsidy shall include the amount of subsidy in the value of supply. It is worthwhile to note here that any subsidy which is provided by Central Government or State Government shall not be includible in the value of supply.

The value of the supply shall not include any discount which is given-

- (a) Before or at the time of the supply if such discount has been duly recorded on the face of invoice issued in respect of such supply; and

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- (b) After the supply has been effected, if-
- (a) Such discount is established in terms of an agreement entered into at or before the time of such supply; and
  - (b) specifically linked to relevant invoices; and
  - (c) Input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

Where the value of the supply of goods or services or both cannot be determined under section 15, the same shall be determined in such manner as prescribed in Rules.

Applicability of the valuation rules arise in circumstances where condition of consideration to be in monetary terms or transaction to be between unrelated person, is violated. It is worthwhile to note here that valuation rules work in a sequential manner, meaning thereby the valuation rules are to be applied in the order of their sequence and one cannot directly resort to the residuary rules. The following are the rules for Valuation:

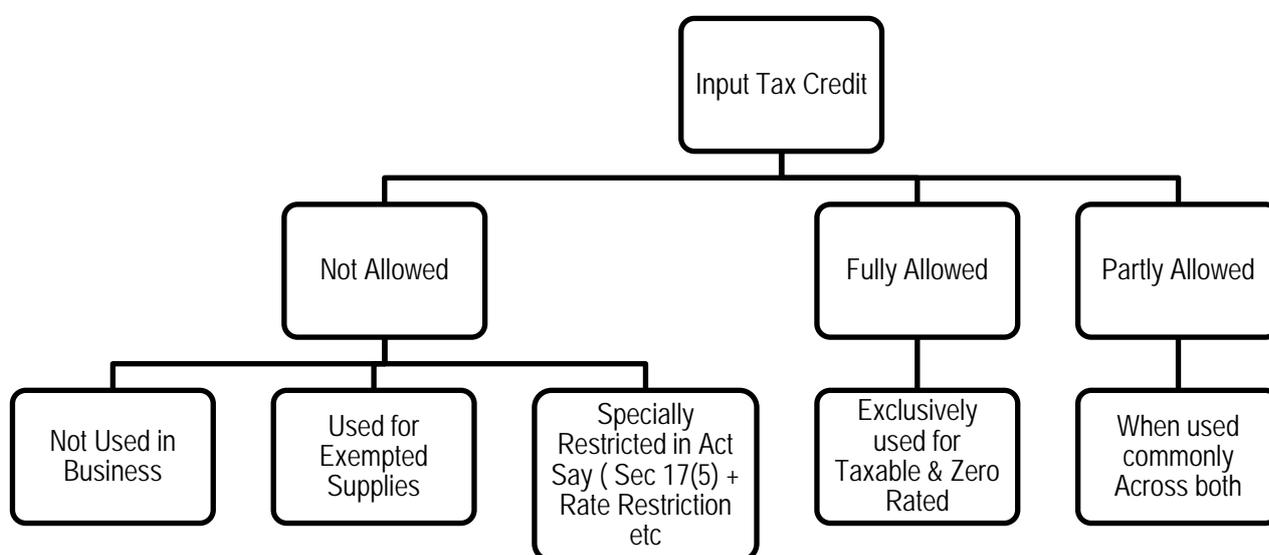
Rule	Particulars
Rule 27	Value of supply of goods or services where the consideration is not wholly in money
Rule 28	Value of supply of goods or services or both between distinct or related persons, excluding agent
Rule 29	Value of supply of goods made or received through an agent
Rule 30	Value of supply of goods or services or both based on cost
Rule 31	Residual method – unable to determine under rules 27 to 30
Rule 32	Determination of value in respect of certain supplies
Rule 32(2)(a)	Purchase and sale of foreign currency including money changing (either rule 32(2)(a) or rule 32(2)(b))
Rule 32(2)(b)	Purchase and sale of foreign currency including money changing (either rule 32(2)(a) or rule 32(2)(b))
Rule 32(3)	Booking of tickets for air travel by an air travel agent
Rule 32 (4)	Life insurance business
Rule 32 (5)	Person dealing in taxable supply of Second hand goods and no input tax credit availed
Rule 32(6)	Valuations in case of Token, Vouchers, stamps or Coupons
Rule 32(7)	Value of taxable services provided by a notified class of service providers as referred to in Para 2 of Schedule 1 between distinct persons
Rule 33	Value of supply of services in case of pure agent
Rule 34	Rate of exchange of currency, other than Indian rupees
Rule 35	Value of supply inclusive of Integrated tax, Central tax, State tax and Union territory tax

## Input Tax Credit on Supplies made to Government

One major reason why GST has been welcomed is seamless flow of Input Tax credits. In the earlier regime, Government Contractors who are mostly in the service providers were not getting credit of VAT paid; similarly, the material suppliers being traders were not able to avail credit of excise duty as well as input tax credit on input services. Works contractors opted for composition scheme for VAT and their inputs were also restricted. GST has brought in a seamless credit mechanism for goods and services.

Input Tax credit is always a COST to the end consumer and for the Business user to get credit, they should be registered under GST and use the Inputs in the course or furtherance of Business.

The following flow chart explains the mechanism of Input Tax Credit under GST



Following conditions are to be fulfilled to claim Input tax credit:

1. Possession of taxpaying documents [section 16(2)(a)]: ITC can be availed on the basis of any of the following documents:

- (a) Invoice issued by a supplier of goods and/or services.
- (b) Invoice issued by recipient (receiving goods and/or services from unregistered supplier) along with proof of payment of tax (in case of reverse charge)
- (c) Debit note issued by supplier
- (d) Bill of entry or similar document prescribed under the Customs Act
- (e) Revised invoice.
- (f) Document issued by Input Service Distributor.

2. Receipt of the goods and / or services [Section 16(2)(b)]

Merely having an Invoice from the supplier is not sufficient to take the Input tax credit; the recipient should also have received the goods and / or services. Further in case of supply of **goods** in lots or parts, against an invoice, the recipient shall be entitled to take credit only when last lot or part is received.

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In case of "Bill to Ship to" Model, the goods are delivered to a third party on the direction of the registered person who purchases the goods from the supplier; for the purpose of availing credit by the purchaser, there is a deeming fiction in the law for receiving of goods in order to comply with the given condition of receipt of goods.

### 3. Tax leviable on supply actually paid to Government [Section 16(2)(c)]

The Tax on such supplies should actually have been paid to the government, whether by way of cash or through utilization of ITC, on the goods and / or services for which ITC is being taken.

### 4. Filing of return [Section 16(2)(d)]

The registered person taking the ITC must have filed his return under section 39.

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

The recipient must not fail in payment of value of the goods and/or services along with the tax within 180 days from the date of issue of invoice. In the event of failure to do so, the details of such supplies and corresponding credits thereon must be furnished in GSTR 2 of the month immediately following such period of 180 days. Such credits availed by the registered person would be added to his output tax liability of the month in which the details are furnished, with interest.

**Exceptions:** This condition of payment of value of supply plus tax within 180 days does not apply in the following situations:

- (a) Supplies on which tax is payable under reverse charge.
- (b) Deemed supplies without consideration.

### 6. If depreciation is claimed on tax component, ITC not allowable [Section 16(3)]

If the person taking 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 said tax component shall not be allowed. Thus, in respect of the tax paid on such items, dual benefit cannot be claimed under Income-tax Act, 1961 and GST laws simultaneously. In other words, either depreciation on the tax component can be claimed under Income Tax Act or ITC of such tax paid can be availed under GST laws.

Credits can be classified as under:

- 1. Eligible credit
- 2. Ineligible credit
- 3. Blocked Credit
- 4. Availed & Un-availed
- 5. Utilised & Unutilised

### **Blocked Credit**

In some cases, the credit though used for the Business, is specifically restricted to be availed. Section 17(5) of the CGST Act deals with the restricted credits.

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 on a small list of items specified by section 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.

It is of utmost importance that in certain items of the negative list credit is allowed by way exception to the exception rule.

The items on which credit is blocked are:

1. *Motor vehicles and conveyances, except when used-*
  1. For transportation of goods
  2. For making the following taxable supplies:
    - Further supply of such vehicles of conveyances; or
    - Transportation of passengers; or
    - Imparting training on driving, flying, navigating such vehicles or conveyances.

Accordingly, it can be said that credit on motor vehicle and conveyance is not blocked, when such motor vehicle is used for the above specified purposes.

2. *Foods and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, except when-*

An inward supply of these is used for making an outward taxable supply of the same category or as an element of a taxable composite or mixed supply.

Henceforth, the credit will be allowed when the above services are used for the outward supplies or as an element of composite or mixed supply.

3. *Membership of a club, health and fitness centre*
4. *Rent-a-cab, life insurance and health insurance, except where-*
  1. The Government has made it obligatory for an employer to provide any of these services to its employees; or
  2. Inward supply of these services is used for making an outward taxable supply of the same category or as an element of a taxable composite or mixed supply.
5. *Travel benefits to employees on vacation such as LTC or home travel concession*
6. *Works contract services for construction of an immovable property, except when-*
  1. It is input service for further supply of works contract service
  2. Immovable property is plant and machinery

Thus, credit for works contract service shall be available to works contractors whose outward supplies are also works contract.

7. *Inward supplies received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account even when such supplies are used in the course or furtherance of business.*
8. *Inward supplies on which tax has been paid under the composition scheme*
9. *Inward supplies received by a non-resident taxable person except goods imported by him.*
10. *Goods and / or services used for personal consumption*
11. *Goods that are lost, stolen, destroyed, written off or disposed of by way of gift or free samples.*

### What Happens when the Credits are used for Taxable and Exempted Purposes?

As mentioned in the above chart, the ITC is available proportionately when Goods / services are commonly used for taxable and exempted purposes, the credits need to be allocated based on the Turnover and the detailed methodology has been given in Rule 42, which is discussed below:

In the following instances, full ITC on inward supplies cannot be taken; only proportionate ITC is allowed:

1. When the goods and / or services are used by the registered person partly for the purpose of business (see the definition of business under section 2(17) of CGST Act, 2017) and partly for other purposes [Section 17(1)]; and
2. When the goods and / or services are used by the registered person partly for making taxable supplies including zero-rated supplies and partly for making exempt supplies [Section 17(2)].

Where goods and/or services are used partly for non-business purposes and partly for business purposes, ITC attributable only to business purposes can be taken by the registered person. Similarly, where goods and/or services are partly used for making exempt supplies including zero rated supplies and partly for taxable supplies, ITC attributable to taxable supplies and zero-rated supplies can be taken by the registered person.

### Methodology of apportionment of credit on inputs and input services and reversal thereof [Rule 42 of the CGST Rules]

In many situations, the amount of input tax involved in exempt /non- business use is not easily discernible, as common goods and/or services are used for

- (i) making taxable supplies including zero rated supplies and exempt supplies and
- (ii) business and non-business purposes.

Rule 42 of the CGST Rules provides the methodology for apportionment of ITC on inputs and input services and reversal of ineligible credit as follows:

#### Steps to determine ineligible credits:

1. Compute common credit
2. Compute credit attributable to exempt supplies
3. Compute eligible credits

#### Step 1 – Compute common credit

	Total input tax involved on inputs & input services in a tax period	T
Less:	Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	(T <sub>1</sub> )
Less:	Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	(T <sub>2</sub> )
Less:	Less: Input tax on inputs & input services which are ineligible for credit [blocked credits]	(T <sub>3</sub> )
	<b>ITC credited to Electronic Credit Ledger</b>	C <sub>1</sub>
Less:	Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	(T <sub>4</sub> )
	<b>Common ITC available for apportionment</b>	C <sub>2</sub>

To illustrate,

Assuming that, a Contractor (M/s. XYZ) is manufacturing and supplying Stationery needs like Paper, Pens, Slate, pencils and chalk sticks etc. to the Government.

Out of the Above Slate, pencils and chalk sticks are exempt. During the course of Manufacture of the given goods, some plastic and wood is used commonly for manufacture of taxable and exempted products.

Let's say some Dyes & colours are used in the manufacture of all the above.

- (i) However, bright pink is used only for Slate pencils – Exempted Product.
- (ii) Black colour is used manufacture of PENS – taxable product
- (iii) Blue and yellow colours are used for all the varieties.
- (iv) Assuming there are some purchases made by the supplier which have been used for personal purpose where the ITC is Rs.10k during the month, let us understand how the Common Credits are to be computed.

Inward supplies during the month

- 1. Input tax on brown dye: Rs. 10,000 (This is T1)
- 2. Input tax on bright pink dye: Rs. 90,000. (This is T2)
- 3. Input tax on black dye: Rs. 40,000. (This is T4)
- 4. Input tax on blue dye: Rs. 1,00,000
- 5. Input tax on yellow dye: Rs. 15,000

Total input tax: Rs. 2,55,000 (This is T)

Total input tax reduced by (T1 + T2 + T4, i.e., by Rs. 1,40,000) is Rs. 1,15,000.

Amount of common credit (C2) is Rs. 1,15,000.

***Step 2 – Compute credit attributable to exempt supplies***

Apportion C2 into credit attributable to exempt supplies D1 as under:

$$D1 = (E/F) \times C2$$

E = Aggregate value of exempt supplies during the tax period

F = Total turnover during the tax period

M/s. XYZ Supplies Taxable and Exempted Products and has the following turnover in October and has 1,15,000 common credit that must be apportioned:

- Turnover of Slate pencils and chalk sticks Rs. 3 crores (This is 'E')
- Turnover of all varieties of other taxable Supplies: Rs. 2 crores
- Total turnover of all footwear during the month: Rs. 5 crores (This is 'F')

$(3,00,00,000 / 5,00,00,000) \times 1,15,000 = 69,000$  is the input tax that pertains to exempt supply (D1).

***Step 3 – Compute eligible credits***

Compute C3 attributable to business purposes and taxable supplies including zero rated supplies as under:

$$D2 = C2 \times 5\% = 1,15,000 \times 5\% = 5,750$$

$$C3 = C2 - (D1 + D2) = 1,15,000 - (69,000 + 5,750) = 40,250$$

$$\text{Total eligible credit} = 40,000 + 40,250 = 80,250$$

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### Optional method for banks etc. [Section 17(4) read with rule 38]

- As an alternative to the above method, a banking company or a financial institution including a NBFC, which accepts deposits, or extends loans or advances, has the option to limit its availment of ITC to 50% of the eligible ITC on inputs, capital goods and input services each month and the remaining ITC shall lapse.
- Credit of tax paid on inputs and input services that are used for non- business purposes and items mentioned by section 17(5) [blocked credits] cannot be availed.
- The option once exercised cannot be changed during the remaining part of the financial year.

### CREDIT IN SPECIAL CIRCUMSTANCES [SECTION 18]

**Availment:** If A Government Contractor obtains registration owing to threshold limit or upon change from composition scheme to regular scheme or when any of the exempted goods become taxable, there are provisions to enable such contractor to take input tax credit of the stock lying on the date of the incidence. [Sub-sections (1) and (2) of section 18 read with rule 40 of CGST Rules]

The credit on inputs held in stock and contained in semi-finished goods or finished goods held in stock and capital goods at the time of registration/voluntary registration or upon coming into regular tax/tax-paying status will be available in the following manner:

Sl. No	Persons eligible to take credit	Goods entitled to ITC	As on	Conditions
1.	Person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date from which he becomes liable to pay tax	ITC to be availed within 1 year from the date of issue of tax invoice by the supplier.
2.	Person who is not required to be registered, but obtains voluntary registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date of registration	
3.	Registered person who ceases to pay composition tax and switches to regular scheme	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme	ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice ITC to be availed within 1 year from the date of issue of tax invoice by the supplier.
4.	Registered person whose exempt supplies become taxable supplies	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and capital goods exclusively used for such exempt supply	The day immediately preceding the date from which such supply becomes taxable	

**Reversal of ITC on switching to composition levy or exit from tax-paying status [Section 18(4) read with rule 44 of CGST Rules]**

1. Section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.
2. ITC on inputs will be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, the ITC to be reversed, will be based on the prevailing market price of such goods on the date of switch over/exemption. The details furnished on the basis of prevailing market value will be duly certified by a practicing Chartered Accountant/ Cost Accountant.
3. ITC involved in the remaining useful life (in months) of the capital goods will be reversed on pro-rata basis, taking the useful life as 5 years.
4. The reversal amount will be added to the output tax liability of the registered person.
5. The ITC to be reversed on inputs and capital goods will be calculated separately for ITC of CGST, SGST/UTGST and IGST.

**Sale of Capital Assets**

In case the capital asset is sold within 5 years from the date of purchase on which Input tax credit has been availed, proportionate credit has to be reversed. [Section 18(6) read with rule 40(2) & rule 44(6) of CGST Rules]

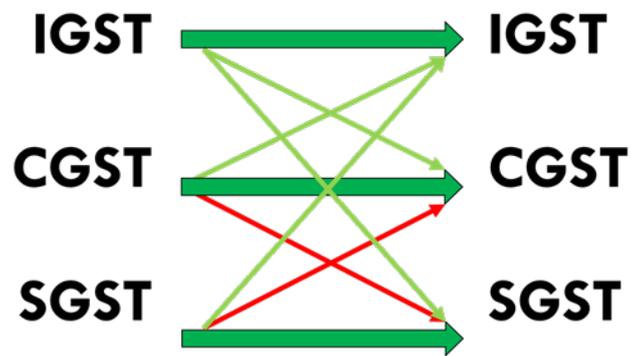
1. If the capital goods or plant and machinery on which ITC has been taken are supplied outward by the registered person, he must pay an amount that is the higher of the following:
  - o ITC taken on such goods reduced by 5% per quarter of a year or part thereof from the date of issue of invoice for such goods (i.e., ITC pertaining to the remaining useful life of the capital goods), or
  - o tax on transaction value
2. ITC pertaining to remaining useful life of the capital goods will be computed separately for CGST, SGST/UTGST and IGST.
3. If refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value.

**How to Set Off Input Tax Credit against Tax Liability in the GST Regime**

GST is a dual concept tax system. On every transaction (within a state), there will be a component of Central GST (CGST) and State GST (SGST). Integrated GST (IGST) is for interstate transactions. Therefore, it is important for businesses to know how to set off the input tax credit against each of these components in the following order as prescribed by the Law:

Input Tax Credit	Set off against liability
CGST (Central GST)	CGST and IGST (in that order)
SGST (State GST)	SGST and IGST (in that order)
IGST (integrated GST)	IGST, CGST, SGST (in that order)

Pictorial presentation of the same is given below:



It may also be noted that, the balance of SGST cannot be utilised for the payment of IGST, until and unless, balance of CGST is utilised in full.

## Accounts and Records

Every registered person has to maintain true and correct account of details as specified in Section 35(1) read with rule 56 at the principal place of business as mentioned in the certificate. In case there are more than one place of business mentioned in the certificate, then accounts relating to each place of business shall be kept at such places of business. This is applicable even for the dealers dealing in Government supplies. Many times, users get into a doubt as to whether this is applicable even if whole or substantial portion of the turnover is exempt; the point to note here is maintenance of records has no connection with taxability after having registered under GST.

Chapter VIII comprising of section 35 and 36 of the CGST Act deals with maintenance of Accounts and Records. Rules 56 and 57 of the CGST Rules, 2017 detail out the procedures.

Let us understand what are the relevant accounts and records that are required to be maintained

1. The documents to be maintained (Physically / Electronically)-

- Production or Manufacture of Goods
- Inward Supplies
- Outward Supplies
- Stock of Goods
- Input tax credit
- Output tax payable and paid
- Other particulars prescribed in Rule 56

2. Different vouchers to be maintained under the Act are-

- Invoices, bills of supply
- Delivery challans
- Credit notes
- Debit notes
- Receipt vouchers
- Payment vouchers and
- Refund vouchers

Meaning assigned to each of the documents mentioned, under GST Act are different from what is understood in common parlance. Therefore, it is necessary to understand it in the context of GST.

Let us understand these terminologies of vouchers in detail:

<i>Documents</i>	<i>Section and Rule</i>	<i>Applicable to</i>
Tax Invoice	Section 31(1) & (2) - Rules 46, 47 and 48	A detailed format has been prescribed detailing issuance of an Invoice by a registered Dealer for all the taxable supplies of goods/services
Revised Invoice	Section 31(3)(a) -	When a new Registration has been obtained, the

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	Rule 53	transactions undertaken from the due date of registration to the date of registration would be revised back to a new Invoice dated the date of registration. In no other case an Invoice once generated is allowed to be revised under this Act
Bill of Supply	Section 31(3)(c) – Rule 49	Exempt Supplies/Composite Dealer
Invoice-cum-bill of supply	Section 31 Rule 46A	Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single “invoice-cum-bill of supply” may be issued for all such supplies.
Self-Invoice	Section 31(3)(f) – Rule 46	Every registered person has to generate an Invoice for all the inward supplies received from unregistered persons which are liable for payment of tax under Reverse Charge Mechanism under section 9(3) & 9(4) as well.  The invoice can be generated once a month consolidated or for each transaction separately for supplies subject to reverse charge under section 9(4). It may also be noted that the given reverse charge has been kept in abeyance w.e.f. 13.10.2017 till 30.09.2019.
Credit Note	Section 34(1) read with Rule 53	The registered person may issue a credit note to the recipient when: <ul style="list-style-type: none"> <li>• the taxable value is in excess of the actual value or</li> <li>• the tax charged is in excess of the actual tax to be paid or</li> <li>• if the goods are returned by the recipient, or</li> <li>• the goods are found deficient</li> </ul> The credit note can be issued for any invoice pertaining to the preceding financial year, till the time being earlier of the month of September following the FY, or date of filing of the annual return.
Debit Note	Section 34(3) and (4) read with Rule 53	Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the <ul style="list-style-type: none"> <li>• taxable value or</li> <li>• tax payable in respect of such supply,</li> </ul> the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as prescribed in rule 53 In nut shell this is an additional Invoice.
Receipt Voucher	Section 31(3)(d) – Rule 50	Receipt of advance money from the customer. In normal parlance for every payment which is received from customer a receipt voucher is generated, which

		may be called as Accounting Receipt Voucher; for GST only when Advance is received from the customer, it would be treated as Receipt Voucher.
Payment Voucher	Section 31(3)(g) – Rule 52	Document to be maintained, when payments are made for RCM inward supplies.
Refund Voucher	Section 31(3)(e) – Rule 51	Advance Money Received but no supply made or supply made is short of the Advance received

3. Every registered person shall keep the particulars of –
- Supplier - Names and complete addresses of suppliers from whom he has received the goods or services which are chargeable to tax under the Act.
  - Recipient - Names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter.
  - Location – Complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.
4. Other points to be noted for Record Keeping
- (i) Particulars of Address
- (a) Suppliers - Names and complete addresses of suppliers from whom he has received the goods or services which are chargeable to tax under the Act.
- (b) Recipient - Names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter.
- (c) Location – Complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.
- (ii) Accounts of Advances - Every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.
- (iii) Any entry in registers, accounts and documents shall not be erased, effaced or overwritten.
- (iv) All incorrect entries shall be scored out under attestation and thereafter, the correct entry, shall be recorded if those are not of clerical nature.
- (v) Where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.
- (vi) Each volume of books of account maintained manually shall be serially numbered.
- (vii) If any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, such documents, registers or any books of account shall be presumed to be maintained by the said registered person unless it is proved that it is not related to the said registered person.
- (viii) Authentication – All the accounts and records may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.
- (ix) Period of Retention of Accounts - Accounts & vouchers maintained shall be preserved for the period as provided in section 36 i.e. for 72 months from the due date of annual return of the FY.
- (x) Place to keep books of accounts - Where accounts and documents are maintained manually, such records should be kept at every related place of business mentioned in the certificate of registration.

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If the accounts and documents are maintained digitally, they shall be accessible at every related place of business.

- (xi) Records by Carrier or Clearing and Forwarding Agents - Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent, for delivery or dispatch thereof to a recipient on behalf of any registered person shall:

Maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.

- (xii) Produce the Books of accounts on demand - Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force

### 5. Period for Retention of Records

- (a) All records shall be maintained for a period of *72 months* from the due date of filing of annual return i.e., *6 years and 9 months* from the end of the year.
- (b) In case the assessee is a party to any appeal /revision/other proceeding, then he shall additionally maintain the said documents for a period of 1 year after the disposal or period specified.

### 6. For Records maintained electronically

Today books of accounts are generally being maintained electronically, the following should be adhered to where the accounts are maintained electronically.

- Backup - Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.
- Produce Hard copy on demand - The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.
- Provide Password for access - Where the accounts and records are stored electronically, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, wherever necessary.

## Chapter 9

# E-Way Bill

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The GST system provides for an e-way bill, a document to be carried by the person in charge of conveyance, generated electronically from the common portal. This document is intended for registered taxpayers under GST and un-registered transporters.

The concept started with the concept of delivery note under the VAT regime. This was necessitated to monitor bulk trade necessarily through trucks so as to ensure that the traders have accounted for their sales honestly. At the end of the month the tax payer had to submit a utilization statement of the forms issued.

To overcome the difficulties of Delivery note, some states have a concept of eWay bill called by different names like e-Sugam in Karnataka etc., wherein the taxpayer would load the details into the server which would automatically generate the way bill with a unique number.

Now under the GST regime the concept of way bill is separate for each state. The taxpayer is made to upload the details of each transaction to a common portal <http://ewaybill.nic.in> through the Internet, and once uploaded; the common portal would automatically generate a document with a unique number. This unique e-Way Bill number could accompany the goods vehicle as a proof of having uploaded the details of the transaction.

This concept is drawn from the earlier VAT regime.

### Objectives

- Single e-way bill for movement of the goods throughout the country.
- To prevent the evasion of tax.
- Hassle free movement of goods across India.
- Tracking the movement of goods with e-waybill number.
- Easier verification of the e-waybill by officers with previous verifications records.

The system supports the transporters to prepare the consolidated e-way bill and hand over to person in charge of conveyance instead of giving the multiple e-way bills for movement of multiple consignments like parcel in one vehicle.

### *Process of Registration to common portal: Regular Dealer*

1. E-Way Bill Portal
2. Registration
3. E-Way Bill Registration
4. Enter GSTIN
5. Confirm OTP
6. Set User Name & Password

### *Broad steps in e-Way Bill process*

1. Information to be provided by every registered person prior to the movement of goods and generation of the e-way bill

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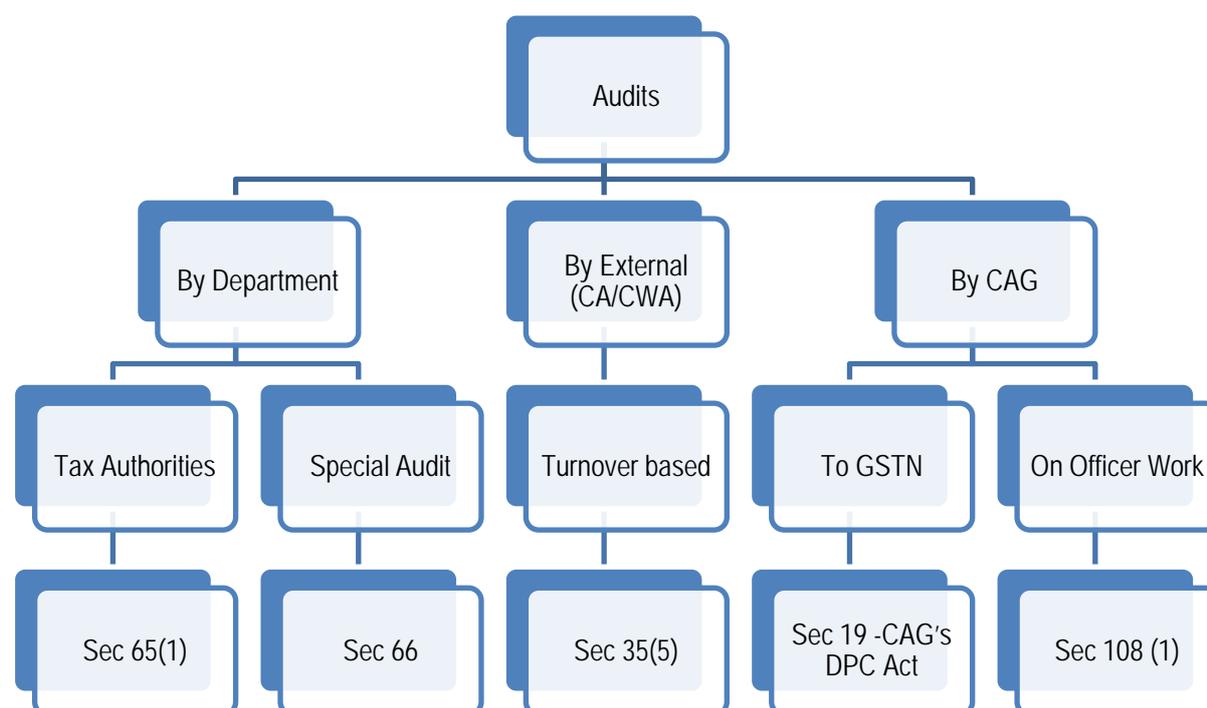
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2. A unique e-way bill number (EBN) would be available as and when the e-way bill is generated in the common portal. EBN is available to both the supplier and the transporter.
3. The person responsible for conveyance shall carry
  - (a) Invoice/bill of supply/delivery challan and
  - (b) Copy of the e-way bill or the EBN
4. If the recipient is registered then the EBN shall be communicated to the recipient on the common portal, so as to communicate acceptance or rejections of the consignment covered in the e-way bill.
5. The information furnished in the e-way bill would be made available to the registered person on the common portal who may utilize the information in filing form GSTR-1

## GST Audit Compliances

The term 'audit' is defined under Section 2(13) of CGST Act 2017, to mean examination of records, returns and other documents maintained or furnished by the taxable person under this Act or rules made thereunder or under any other law for the time being in force to verify, inter alia, the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or rules made thereunder.

Various audits under the GST law are as follows



### Turnover based Audit

#### 1. Overview

The concept of external audit is not new in Indirect Taxes Regime. There used to be an annual audit based on threshold limit being crossed. Similarly, in GST also there is an audit on supplier if the aggregate turnover crosses Rs. 2 crores per annum.

#### 2. Provisions of the Law

(a) *Section 35 (5)*: Every registered person whose turnover during a financial year exceeds the prescribed limit (2 crores rupees) shall get his accounts audited by a chartered accountant or a cost accountant and shall submit

- (i) a copy of the audited annual accounts,
- (ii) the reconciliation statement under sub-section (2) of section 44 and
- (iii) such other documents in such form and manner as may be prescribed

## E-publication on Supplies by/to Government under GST

(b) *Section 44(2)*: Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically,

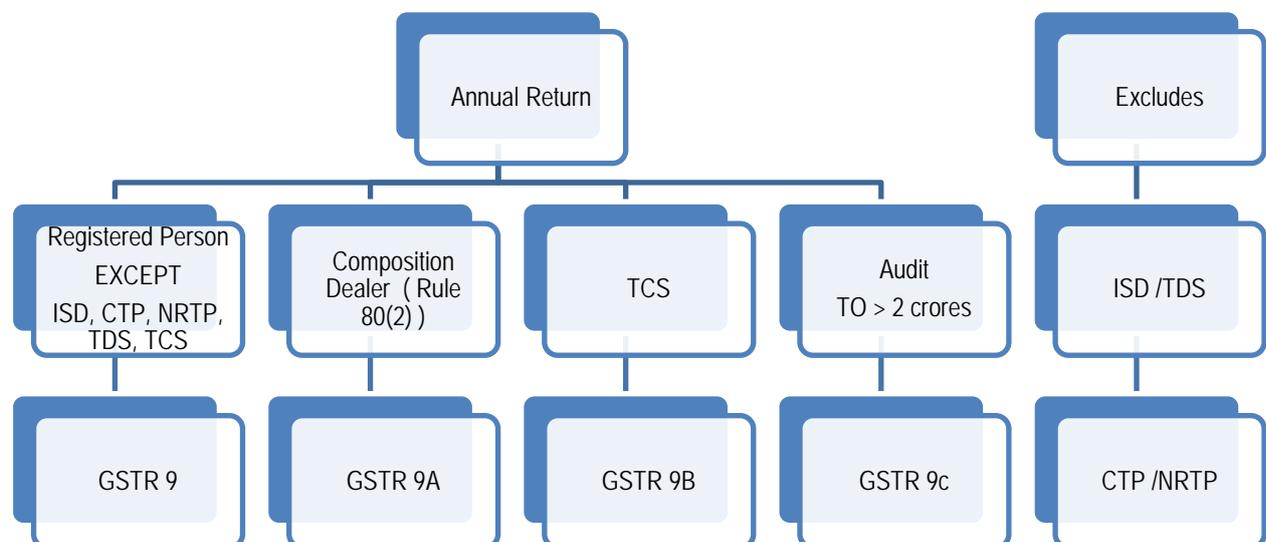
- (i) the annual return under sub-section (1) along with
- (ii) a copy of the audited annual accounts and
- (iii) a reconciliation statement, reconciling the value of supplies declared in the return furnished
- (iv) for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

Due date for furnishing annual return under section 44 along with certified reconciliation statement and audit report has been extended upto 30<sup>th</sup> June 2019 for FY 2017-18 through Removal of Difficulties Order No. 3/2018 dt. 31.12.2018 issued under section 172 of the CGST Act.

(c) *Rule 80 (3)*: Every registered person whose aggregate turnover during a financial year exceeds two crores rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish

- (i) a copy of audited annual accounts and
- (ii) a reconciliation statement, in FORM GSTR-9C, duly certified,
- (iii) electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner

### 3. What are the Returns and Forms to be filed annually by a dealer?



### 4. Focus of the Audit

- (a) Broad overview
  - (i) HSN classification; HSN is a 6-digit classification which will enable the supplier to correctly determine the category of the product and rate there by.
  - (ii) Old rates & new rates: Change in the rate from old regime to new GST regime will be verified.
  - (iii) Input credit

1. Ineligible: As detailed in the Input tax credit chapter all the credits ineligible would be audited.
  2. Credit reversals –CG & others: Rule 42 and Rule 43 of the Act deal with proportionate reversal, whether the same has been applied or not.
- (iv) Reconciliation between
1. Books of account & Returns: Reconciliation of Turnover with Books and Returns similarly ITC availed with Books and Claimed in Returns.
- (v) Valuations
1. Deductions admissible
  2. Value enhanced – Differential taxes
- (vi) Application of frequent changes / Notification in GST to be monitored
- (b) Audit of supplies
- (i) Levy & collection of tax
1. Activity considered/ not considered as supply
  2. Validation of exemptions
  3. Classification between composite and mixed
  4. RCM application
- (ii) Other supply aspects compliance with law
1. Time of supply
  2. Place of supply
  3. Value of supply
- (c) Audit on Input Tax Credits availed
- (i) Available vs. availed
1. Filed by the other person in GSTR 1
  2. Claimed by dealer in GSTR 3B
- (ii) Eligible vs. in-eligible
1. Application of section 16 ,17, 18
  2. Job work procedures
  3. ISD credits
- (iii) Reclaim of the credit
1. Special credit on transitional provisions & 18(1)
- (d) Audit on refunds
- (i) Audit of refunds
1. Refund claimed by the dealer
  2. Refund sanctioned to the dealer
  3. Amount of refund disallowed by the proper officer

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- (e) Show cause notices(SCN) issued and penalties levied
- (i) Auditor will review the compliance by dealer with regard to the SCN and the timely replies to the same.
- (f) Advance Ruling
- (i) In case the dealer has sought for and advance ruling, whether the effect of the Ruling is properly given in the books or not would be reviewed.

5. **Reconciliation Statement:** as a part of the Audit, the Auditor would review to satisfy himself of the correctness of data provided by the dealer in returns vis a vis Books of accounts Maintained.

- (a) Sample Revenue Reconciliation

<b>GSTR 1 : RECON WITH BOOKS</b>		
	<b>Total Credits in statement of profit and loss</b>	<b>XXX</b>
<b>Less:</b> Not Goods/ Not Services - eg Dividend Income		(XXX)
<b>Less:</b> Sch III Items which is not a Supply eg: Land & Building etc		(XXX)
<b>Less:</b> April - June Supplies		(XXX)
<b>Less:</b> Receipts Not in the Course of Business		(XXX)
<b>Add:</b> Sch I Supplies like Branch Transfer not in books, but supply as per GST Law		XXX
<b>Add:</b> Receipts capitalised but taxable to GST		XXX
<b>Less:</b> Profit on Sale of Capital Goods		(XXX)
<b>Add:</b> Taxable Value of Supply of Capital Goods		XXX
<b>Add:</b> Advance received during the Current Period		XXX
<b>Less:</b> Advance of earlier period adjusted during the Current period		(XXX)
<b>Less:</b> Closing unbilled revenue recognised - But Time of Supply did not arise		(XXX)
<b>Add:</b> Opening unbilled revenue( Billed during the period/Time of supply falls in the month)		XXX
<b>Total Value in GSTR 1</b>		<b>XXX</b>

- (b) Sample Expenses Reconciliation

<b>GSTR 2 : RECON WITH BOOKS</b>		
	<b>Total debits in statement of profit and loss</b>	<b>XXX</b>
<b>Less:</b> Schedule III items (Ex: Salary expense)		(XXX)
<b>Less:</b> Depreciation and Amortization		(XXX)
<b>Less:</b> Accrued expenses and month end provisions, not credited to party account		(XXX)
<b>Add:</b> Invoices recd and adjusted for Expenses provision made earlier		XXX
<b>Add:</b> Capital Expenses		XXX
<b>Add:</b> Advance paid to unregistered dealers -Expenses Not Booked		XXX
<b>Less:</b> Purchases booked for URD Advances paid in earlier periods		(XXX)
<b>Total Taxable value in GSTR 2</b>		<b>XXX</b>

## (c) Computation of differential Taxes

Sl. No.	Particulars	Amount as per returns (in Rs.)	Amount as per Audit (in Rs.)	Difference (in Rs.)
1	2	3	4	5
[A]	Output tax payable (including interest, fee, penalty and other levies) under the GST Acts-			
	(a) CGST Act			
	(b) SGST/ UTGST Act			
	(c) IGST Act			
[B]	(d) GST Compensation Cess Act			
	Input Tax Credit eligible claimed under the GST Acts-			
	(a) CGST Act			
	(b) SGST/ UTGST Act			
[C]	(c) IGST Act			
	(d) GST Compensation Cess Act			
	Input Tax Credit ineligible disclosed under the GST Acts-			
	(a) CGST Act			
[D]	(b) SGST/ UTGST Act			
	(c) IGST Act			
	(d) GST Compensation Cess Act			
	Net tax payable under the GST Acts -			
[D]	(a) CGST Act			
	(b) SGST/ UTGST Act			
	(c) IGST Act			
	(d) GST Compensation Cess Act			
	Any other item (specify)			

## Regular Audit by Tax Authorities

### 1. Overview

The Commissioner or any other officer authorized by him may undertake the audit by general or specific order for a financial year or multiples thereof as covered in Rule 101 of CGST Rules.

Audit is normally undertaken to determine the correctness of the payment of GST made by the registered person.

All details regarding, outward supply, inward supply, availment of credit, payment of tax is made and declared in return by the registered person are verified in Audit.

Section 65(2) of GST Act provides that the Commissioner or any officer authorised by him may undertake the audit of any registered person at the place of business of registered person or in their office.

Sub-section (3) of section 65 provides that the registered person shall be informed by notice, sufficient in advance, of not less than 15 working days prior to conduct of Audit. This will enable him to keep the records ready for Audit team.

## **E-publication on Supplies by/to Government under GST**

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Rule 101(2) of CGST Rules states that, proper officer shall issue the notice in FORM GST ADT-01 in accordance with the provisions of Section 65(3). The notice will specify the period for which the audit will be conducted

**2. Time Limit for Audit:** The audit shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

**3. Explanation.** - For the purposes of this sub-section, the expression "commencement of audit" shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

### **4. Facilitating conduct of audit**

- Authorised officer may require registered person-
  - To afford him necessary facility to verify the books of account or other documents as he may require,
  - To furnish such information as he may require and render assistance for timely completion of audit
- Collect Information: Rule 101(3), states that the proper officer authorised to conduct audit shall, with the assistance of team of officers verify the following documents and record the observations in his Audit notes-
  - Documents / Books of accounts maintained
  - Returns and statements furnished under provisions of the Act
  - Correctness of turnover / Exemptions and deductions claimed
  - Rate of tax applied on supply of goods or services or both
  - Input tax credit availed and utilized
  - Refund claimed
  - Other relevant issues
- Collect Replies: As per Rule 101(4), the proper officer may inform the registered person of discrepancies noticed during the audit and such person may file his reply to proper officer. The proper officer then shall finalize the findings of the audit after considering the reply.

### **5. Conclusion of audit:**

On conclusion of Audit, the proper officer shall within thirty days inform the registered person about the findings, his rights and obligations.

- (i) **Audit Findings:** The proper officer shall inform the findings of audit to registered person in FORM GST ADT-02. The reasons of findings of registered person shall also be informed. Such findings enable the registered person to properly reply to the officer. -Rule 101(5) of CGST Rules.
- (ii) **Closure of Audit:** The higher authorities reviewing the findings of authorized officer may be satisfied with the reply given by registered person. The proceedings may get closed at this stage.

The proper officer for purposes of this section 65(6) will be deputy or Assistant Commissioner of Central Tax [Circular no 3 of CBEC dated 5<sup>th</sup> July 2017].

#### 6. Demand for differential tax under Audit

As a result of audit, if it is ascertained that the registered person has not-

- Paid the tax
- Short paid the tax; or
- Erroneously refunded; or
- Input tax credit is wrongly availed or utilized.

then the proper officer shall initiate action for recovering the amount.

The provisions relating to recovery of tax or credit are contained in sections 73 and 74 of the CGST Act.

#### 7. Penalties

*Section 73 –*

- Other than fraud, suppression etc.
- Tax + Interest (18%) + Penalty
- Penalty = 10% of tax or Rs. 10,000/- whichever is higher (Section 73(9))

*Section 74 –*

- Fraud, suppression etc. Pay Tax + Interest (18%) + Penalty
- Penalty = Tax (Section 74(1))
- Before service of notice suo motu – Penalty = 15% No notice by officer
- If paid within 30 days of notice – penalty = 25%
- If paid within 30 days of order – penalty = 50%

### Special Audits

1. If during any stage of scrutiny, enquiry, investigation or any other proceedings before him, the officer not below rank of Assistant Commissioner

- Having regard to the nature and complexity of case and
- interest of revenue is of the opinion that,
- value has not been correctly declared or
- credit availed is not within normal limit,

He may direct such person by communication in writing to get his accounts audited by Chartered Accountant or cost Accountant.

The officer must obtain prior approval of Commissioner who will nominate the Chartered Accountant or Cost Accountant for the purpose of Audit.

2. The Chartered Accountant or Cost Accountant so nominated by the commissioner shall complete the audit by examining such records as he may deem fit within **period of ninety days** and submit the report duly signed and certified by him to Assistant commissioner.

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- However, for sufficient reason, if unable to complete the audit within specified period of 90 days, he can ask for extension by making application. The commissioner may extend the period for another 90 days.
- 3. **Additional Audit:** This audit will be in addition to the audit already conducted under any other statute. Section 66(1) overrides provisions of any audit conducted under this Act or any other law.
- 4. **Opportunity of being heard:** Upon a finding given by CA / CWA against registered person by the authority, the
  - Registered person shall be given an opportunity of being heard in respect of any material gathered during said audit.
  - Registered person can object to the findings given by Chartered Accountant/ Cost Accountant.
- 5. **Audit Fees:** Expenses + Remuneration to such Chartered Accountant/ Cost Accountant shall be determined and paid by Commissioner.
  - The said determination shall be final and the registered person cannot question the determination of remuneration.
  - If special audit conducted results in detection of tax not paid or short paid or erroneously refunded, or Input tax wrongly availed or utilized, actions under sections 73 and 74 of CGST act shall be taken for purpose of recovery of amount.

The proper officer for purposes of section 66(6), will be the Superintendent of Central Tax [Circular no 3 of CBEC dated 5<sup>th</sup> July 2017].

8. Every person in charge of a place shall, on demand, make available to the officer authorised / audit party deputed by the proper officer / a cost accountant / chartered accountant nominated under section 66—
- (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
  - (ii) trial balance or its equivalent;
  - (iii) statements of annual financial accounts, duly audited, wherever required;
  - (iv) cost audit report, if any, under section 148 of the Companies Act, 2013;
  - (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and
  - (vi) any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

## Other Compliances

### Payment of Tax

#### Payment of Tax, Interest and Penalty [Section 49]

Payment of tax, interest, penalty and other amounts		
Electronic Cash Ledger (FORM GST PMT-05) [Rule 87]	Electronic Credit Ledger (FORM GST PMT-02) [Rule 86]	Electronic Liability Ledger (FORM GST PMT-01) [Rule 85]
<p><b><u>Credited:</u></b> Deposit of tax, interest, penalty, fee or other amount by a taxable person through internet banking, NEFT, RTGS, Debit/ Credit Cards or any other mode</p>	<p><b><u>Credited:</u></b> ITC as self-assessed in the return  By the amount of rejection of refund claim</p>	<p><b><u>Credited</u></b> by payment of tax liability Relief given by appellate authority or appellate tribunal or court By payment of tax, interest, penalty specified in Show Cause notice</p>
<p><b><u>Debited:</u></b> Payment of tax, interest, penalty, fees or any other amount.</p>	<p><b><u>Debited:</u></b> Payment of output tax payable.  Refund claim of unutilised ITC</p>	<p><b><u>Debited:</u></b> amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person or as determined by department.  the amount of tax and interest payable as a result of mismatch under section 42 &amp; 43 or any amount of interest that may accrue from time to time.</p>

#### Due date of Payment [Section 39 (7)]

Every amount due towards tax shall be paid not later than the last date on which the person is required to furnish return i.e. 20<sup>th</sup> day of the month succeeding such calendar month or part thereof.

#### Manner of Payment

IGST	CGST	SGST
1 <sup>st</sup> IGST	1 <sup>st</sup> CGST	SGST
2 <sup>nd</sup> CGST	2 <sup>nd</sup> IGST	IGST
3 <sup>rd</sup> SGST/UTGST	SGST or UTGST <del>          </del>	CGST or UTGST <del>          </del>

Note: Order of payment as provided above should not be changed

## E-publication on Supplies by/to Government under GST

### Interest on delayed payment of Tax [Section 50]

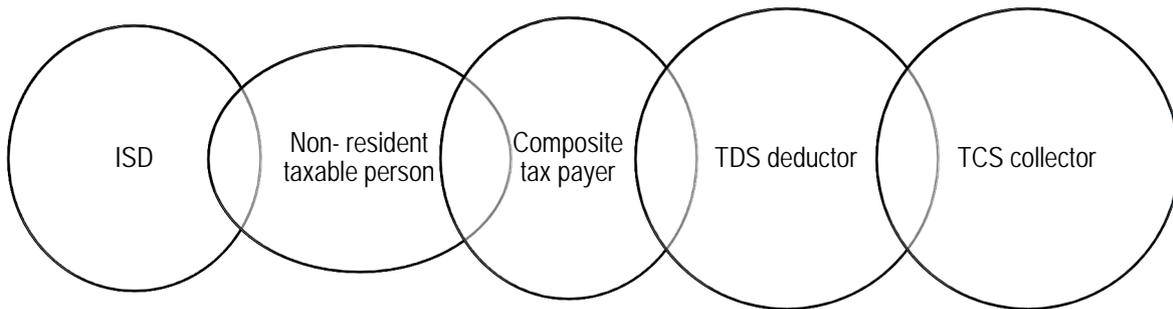
Event	Interest Rate
Delay in payment of tax	18%
On amount payable due to mismatch of ITC or mismatch of output tax liability.	24%

### Tax deducted at Source [Section 51]

Question	Answer
Who needs to deduct tax at source?	(i) a department or establishment of the Central Government or State Government; or (ii) local authority; or Governmental agencies; or (iii) such persons or category of persons as may be notified by the Government on the recommendations of the Council
When TDS is to be deducted?	TDS is to be deducted from the payment made to the supplier, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees: However, no deduction shall be made if the location of the supplier and the place of supply is in a State which is different from the State of registration of the recipient
At which rate TDS is to be deducted?	TDS is to be deducted @ 1%.
Value on which TDS is to be deducted?	Value of supply is to be taken as the amount excluding the tax indicated in the invoice. That means TDS shall not be deducted on CGST, SGST and IGST.
Due date for deposit of TDS deducted?	TDS shall be paid within 10 days from the end of the month in which tax is deducted. The payment shall be made to the Government.
Who will give TDS Certificate to whom?	The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government.
Is there any penalty for non-compliance?	A late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period, subject to a maximum amount of five thousand rupees is to be paid by the deductor if he does not furnish certificate to deductee within 5 days of crediting the amount so deducted to the Government.
Is any credit available for TDS deducted?	Yes, credit will be available to the deductee.

### Annual Return [Section 44]

Every registered taxable person shall furnish an annual return for every F.Y. electronically on or before the thirty first day of December following the end of such Financial Year except by the following registered persons:



Every registered taxable person who is required to get his accounts audited under section 35(5) shall furnish electronically, annual Return **along with** audited annual accounts **and** reconciliation statement, reconciling the value of supplies declared in the return furnished for the year with the audited annual financial statement and such other particulars as may be prescribed.

#### **Final Return [Section 45]**

The registered person who is required to furnish details of inward and outward supplies and whose registration has been cancelled shall furnish an annual return within 3 months of the date of cancellation or date of order of cancellation, whichever is later.

#### **Compliance in case of Job Work [Section 143 read with Rule 55]**

Section 2 clause (68) of the CGST Act 2017, defines job work as under:

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

Section 143 of the CGST Act, 2017 provides the process of job work specified under GST. It provides that a registered person, called principal, may send any inputs or capital goods to a job worker for job work without payment of tax under intimation. Those inputs or capital goods can be further sent to another job worker.

It is further provided that such inputs or capital goods shall be brought back after completion of job work or otherwise, within a period of one year or three years respectively at any of his place of business. If inputs or capital goods are brought back within 1 or 3 years, no payment of tax is required at the time of bringing back the goods.

Another option is such inputs or capital goods sent for job work shall be supplied from the place of job worker within one year or three years respectively. Such supply from the place of job worker shall be done on payment of tax if supplied in India or without payment of tax if supplied outside India. Here the important point is in case the job worker is not registered the principal shall show the place of job worker as his additional place of business for the purpose of supplying the goods directly from his place. And in case job worker is registered or deals in notified goods his place need not be shown as additional place of business of principal.

Period of 3 years is not applicable in case of moulds and dies, jigs and fixtures, or tools.

The responsibility of maintaining these records is on principal and not the job worker.

Where the inputs or capital goods are not returned back to the place of business of principal or are not supplied from the job workers place within specified period of 1 year or 3 years, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out.

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Further it is provided that any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

Rule 45 of the CGST Rules 2017 provides for the intimation, as required under Section 143 of the CGST Act 2017, to be filed in case of inputs or capital goods sent for job work. Form ITC-04 is prescribed for the purpose of filing such intimation. Such form needs to be filed within 25 days from the end of the relevant quarter.

Hence for compliance of job work the relevant form that needs to be filed is ITC-04 and the important documents are delivery challan and e-way bill, where-ever applicable.

### GST Compliance Rating [Section 149]

Registered person to be assigned a GST Compliance rating score based on his records of compliance with the provisions of the Act or on the basis of such parameters as may be prescribed and be uploaded at periodic intervals and intimated to the registered person

### Obligation to furnish Information Return [Section 150]

Information returns to be furnished by the following persons:

A taxable person	A local authority or other public body or association	Any authority of the State Government responsible for the collection of VAT, sales tax or State excise duty or an authority of central government responsible for the collection of excise duty or custom duty.
An income tax authority	A banking company	A state electricity board or an electricity distribution and transmission licensee
Registrar or sub registrar	Registrar under companies act	Registering authority under motor vehicles
Collector of the right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act 2013.	Recognized stock exchange	Depository under depositories act
Officer of RBI	Goods and service tax network	A person to whom UIN is granted

If the information return is found to be defective, the proper officer may intimate and give an opportunity to the person concerned to rectify such defect within 30 days from date of such intimation or such other period as may be allowed. If the defect is not rectified within the said period, the said return shall be treated as not furnished.

Where any return is not furnished within the prescribed time, notice may be issued by the said authority, requiring furnishing of such return within 90 days from the date of service of the notice and such person shall furnish the information return.

## Penal Provisions for Non-Compliance

Sl. No	Particulars	Page No.
1	Penalty for Non-compliances related to Registration	
2	Penalty for Non-compliances related to Documentation	
3	Penalty for Non-payment or Short payment of taxes	
4	Penalty for Non-compliance related to Input Tax Credit	
5	Penalty for Non-compliance related to returns	
6	Penalty for Non-compliance related to Accounts and records	
7	Other Miscellaneous Penalties	

### Registration

Section	Particulars	Penalty
122(1)	Liabe for registration but fails to obtain the same	Rs. 10,000/-
122(1)	Furnishes any false information with regard to registration particulars either at the time of applying for registration or subsequently	Rs. 10,000/-

### Documentation

Section	Section	Section
122(1)	Supply without invoice or incorrect or false invoice issued in respect of such supplies	Rs. 10,000/- or the amount of tax evaded whichever is higher
122(1)	Invoice issued without Supply	Rs. 10,000/- or the amount of tax evaded whichever is higher
122(1)	Issues any invoice or document using the GSTIN of another registered person	Rs. 10,000/- or the amount of tax evaded whichever is higher
122(3)	Any person who fails to issue invoice or account for an invoice in its books of accounts as per the Act.	Upto Rs. 25,000/-

### Payment

Section	Particulars	Penalty
122(1)	Tax collected in contravention of the provisions of the Act and not deposited within the period of three months from the date on which such payment becomes due	Rs. 10000/- or an amount equivalent to tax evaded, whichever is higher

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122(1)	Tax collected and not deposited within the period of three months from the date on which such payment becomes due	Rs. 10000/- or an amount equivalent to tax evaded, whichever is higher
122(2)	Payment of tax has not been made, short made for any reason other than fraud or wilful misstatement or suppression of facts.	Rs. 10,000/- or 10% of tax due, whichever is higher.
122(2)	Payment of tax has not been made, short made for any reason of fraud or wilful misstatement or suppression of facts.	Rs. 10,000/- or 100% of tax due, whichever is higher

### Input Tax Credit

Section	Particulars	Penalty
122(1)	Availment and utilization of ITC without actual receipt of goods or services or both in violation of law	Rs. 10000 or the amount of wrong ITC availed and utilised, whichever is higher
122(1)	Takes or distributes ITC in contravention of section 20 or rules made thereunder	Rs. 10000 or the amount of wrong ITC passed or distributed, whichever is higher
122(2)	Input tax credit wrongly availed and utilised for any reason other than fraud or wilful misstatement or suppression of facts	Rs. 10,000/- or 10% of tax due, whichever is higher.
122(2)	Input tax credit wrongly availed and utilised for reason of fraud or willful misstatement or suppression of facts	Rs. 10,000/- or 100% of tax due, whichever is higher

### Return

Section	Particulars	Penalty/ Late Fees
47(1)	Failure to furnish returns (GSTR 3B, GSTR 1, GSTR 2, GSTR 3 and Final return)	Late Fees of Rs 100/- per day subject to a maximum of Rs. 5000/-. Revised late fees vide Notification No. 64/2017 – Central Tax dated 15.11.2017 for failure to furnish the return in Form GSTR 3B. Rs. 20/- (Rs. 10 SGST + Rs. 10 CGST) per day of delay in case of NIL returns. Rs. 50/- (Rs. 25 CGST + Rs. 25 SGST) in other cases
47(2)	Failure to furnish Annual return u/s 44	Late Fees of Rs 100 per day subject to maximum of 0.25% of turnover per Act

**Penal Provisions for Non-Compliance**

123	Failure to furnish information return under section 150 within the period specified in the notice issued under sub section (3) thereof.	Rs. 100/- for each day of the period during which the failure to furnish such return continues subject to maximum of Rs. 5000/-
124	Failure to furnish information or return under section 151 without reasonable cause or wilfully furnish false information or return.	Rs. 10000/- and in case of continuing offence Rs. 100/- per day subject to maximum of Rs. 25,000/-.

**Accounts & Records**

Section	Particulars	Penalty
122(1)	Falsification / substitution of records or production of false accounts/ documents or furnishing of any false information or return with intention to evade payment of tax	Rs. 10000/- or an amount equivalent to the tax evaded whichever is higher
122(1)	Fails to keep, maintain and retain books of accounts & other documents in accordance with law	Rs. 10000/- or the amount equivalent to tax evaded whichever is higher
122(1)	Fails to furnish information or documents called for by an officer in accordance with law or furnishes false document or information in any proceedings.	Rs. 10000/- or the amount equivalent to tax evaded whichever is higher

**Miscellaneous**

Section	Particulars	Penalty
122(1)	Fraudulently obtains refund of tax	Rs. 10,000 or an amount equivalent to the amount of wrong refund claimed, whichever is higher.
122(1)	Obstructs or prevents any officer in discharge his duties under this act	Rs. 10,000 or an amount equivalent to the tax evaded, whichever is higher
122(1)	Transports any taxable goods without the cover of prescribed document	Rs. 10,000 or an amount equivalent to the tax evaded, whichever is higher
122(1)	Suppresses his turnover leading to evasion of tax	Rs. 10,000 or an amount equivalent to the tax evaded, whichever is higher
122(1)	Supplies, transport, stores any goods which he knows are liable to confiscation	Rs. 10,000 or an amount equivalent to the tax evaded, whichever is higher
122(1)	Tampers with, destroys any material evidence or	Rs. 10,000 or amount equivalent

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	document;	to the tax evaded, whichever is higher
122(1)	Disposes off or tampers with any goods that have been detained, seized or attached under the Act.	Rs. 10,000 or an amount equivalent to the tax evaded, whichever is higher
122(3)	Any person who aids or abets any offences under section 122(1).	Upto Rs. 25,000/-
122(3)	Any person who acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying or purchasing or in any other manner deals with any goods which are liable to confiscation under this Act	Upto Rs. 25,000/-
122(3)	Any person who receives or is in any way connected with the supply or in any other manner deals with any goods which are liable to confiscation under this Act	Upto Rs. 25,000/-
122(3)	Any person who fails to appear before the officer on being summoned	Upto Rs. 25,000/-
125	General Penalty for contravention provisions of the Act for which no separate penalty is provided for in this act.	Rs. 25000/-
126	<p>Minor breaches of</p> <ul style="list-style-type: none"> <li>• tax regulations or</li> <li>• procedural requirements,</li> <li>• any omission or</li> <li>• mistake in documentation which is easily rectifiable and made without any fraudulent intention or gross negligence.</li> </ul> <p><b>Note:-</b></p> <ol style="list-style-type: none"> <li>1. A breach is minor breach if the amount of tax involved is less than Rs. 5,000/-</li> <li>2. An omission or mistake in document shall be considered to be easily rectifiable if the same is an error apparent on the face or record.</li> </ol>	No Penalty

**Q1. Whether GST will be leviable on taxes, duties or cesses?**

Ans. GST is not leviable on taxes, duties or cesses. The primary condition for levy of GST is that there should be a supply in the first place. However, in case of taxes, duties or cesses, there is no supply as such against which the consideration is being paid. Hence, there will be no levy of GST. These taxes, cesses or duties include GST, customs duty, income tax, stamp duty, taxes on professions, trades, callings or employment, property tax etc. However, where any tax is charged under any other law on goods or services, while charging GST such tax shall be included in the value of such goods or services for charging GST.

**Q2. Whether GST will be leviable on fines and penalties?**

Ans. There will be no GST on fines and penalties. There can be two kinds of fines and penalties which can be levied by the Government or local authority:

- (a) Violation of Law - Fines and Penalties chargeable by Government or local authority for violations of a statute, bye-laws, rules or regulations are not leviable to GST.
- (b) Non-performance of contract – Fines and damages payable by way of consideration to Government or local authority for tolerance of non-performance of contract have also been exempted

**Q3. Will GST be applicable in case of fees charged for filing of statutory form to the Registrar of Companies on the MCA portal?**

Ans. Yes, GST will be applicable on fees charged for filing of statutory form to the Registrar of Companies on the MCA portal except in the cases below:

1. Services provided by way of Incorporation of Company/LLP will not be chargeable to GST as service of registration required under any law is exempt
2. Services provided by Government or Local Authority below the value of Rs. 5,000/- will not be chargeable to GST. In case of continuous supply of services by Government or Local Authority, services below the value of Rs. 5,000/- in a financial year are not exigible to GST.

Whether the service relating to the fees charged for filing of statutory form to the Registrar of Companies on MCA website is a one-time service or a continuous supply of service is a matter of debate and has not been clarified by the Government. However, taking the view that the record keeping and maintenance of documents is provided by the MCA on a continuous basis, this can be considered to be a continuous supply of service. So, GST should be applicable if the value of filing fees on the MCA portal exceeds Rs. 5,000/- in a financial year.

**Q4. Whether GST will be leviable on any other fees charged by Government or local authority against any service provided by it?**

Ans. Yes, GST will be leviable on the fees charged by the Government or local authority. However, if the service provided by Government or local authority relates to any of the following, then GST will be exempt:

- (a) Service of registration required under any law
- (b) Services of testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law

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- (c) Services where the value of services does not exceed Rs. 5,000/- except sub-clause (i), (ii) and (iii) of Section 66D(a) of the Finance Act, 1994 in which no exemption limit is applicable. For continuous supply of services, this limit becomes Rs. 5,000/- in a financial year.
- (d) It has been clarified in Circular No. 192/02/2016 – ST dated 13<sup>th</sup> April, 2016 that any activity that the Government or local authority undertakes will constitute a service. If any payment is made to the Government or local authority for getting a service in return, it has to be regarded as consideration for that service and will be taxable.

**Q5. Will GST be applicable in case of various services entrusted to Municipalities as per the Constitution like water supply services, change of land use, commercial building approval and utility services?**

Ans. No, the services entrusted to municipalities (list specified in Article 243W of the Constitution) are exempted and no GST will be leviable whether the services are provided by Government, local authority or Governmental authority

**Q6. What are the implications if the services provided by the Government or local authority is part of the statutory or sovereign functions of the Government?**

Ans. The mere fact that such activity is a statutory or mandatory requirement under the law or whether the amount charged is laid down in statute does not have any impact on the chargeability of GST.

The statute has mentioned that the services which are exempted specifically under Notification no. 12/2017-Central tax (rate) dated 28<sup>th</sup> June 2017. Thus, all other services provided by the Government or local authority will be exigible to GST whether a sovereign function or not.

In fact, Circular No. 89/7/2006-ST dated 18<sup>th</sup> December, 2006 and Reference Code 999.01/23.8.07 in Circular No. 96/7/2007-ST dated 23<sup>rd</sup> August, 2007 which talk about the statutory/sovereign functions of the Government will no longer be applicable under the current regime

Therefore, the various statutory payments like ESI Inspection, PF inspection, Motor Vehicles Inspection Charges, Building Inspection etc. will be liable to GST.

**Q7. Whether GST will be leviable on any permission, license or assignment of right to use granted by the Government or local authority?**

Ans. GST is leviable on any payment made against any permission or license or assignment of right granted by the Government or local authority. However, in the following cases where services are provided by Government or local authority, no GST will be leviable:

1. Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016
2. Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products
3. Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.
4. Services provided by the Central Government, State Government, Union territory or local authority by way of testing, calibration, safety check or certification relating to protection or

safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.

5. Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be.

**Q8. What will be the mechanism of payment in case of services provided by the Government or local authority?**

Ans. Notification No. 13/2017-CT (rate) dated 28<sup>th</sup> June 2017 contains the list of services on which the recipient is liable to pay tax. GST in respect of all the services provided by the Government or local authority which are taxable will be liable for payment under reverse charge i.e. the business entity which is in receipt of the services will be liable to pay GST except the following cases wherein the GST will be paid by the service provider i.e. the Government or local authority:

1. Services provided by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government
2. Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport
3. Transport of goods or passengers

**Q8. Who will be liable to pay tax in case of renting of immovable property services provided by the Government or local authority?**

Ans. Notification No. 13/2017-CT (rate) dated 28<sup>th</sup> June 2017 contains the list of services on which the recipient of service will be liable to pay tax. GST in respect of renting of immovable property services provided to any person registered under the CGST Act 2017 will be liable to tax under reverse charge. So, the recipient of service will be liable to pay tax in case of renting of immovable property services provided by the Government or local authority.

**Q9. Whether services in the nature of change of land use, commercial building approval, utility services provided by Government or a local authority are taxable?**

Ans. Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority, Government or a local authority are exempt.

**Q10. Whether Services provided by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution are taxable or exempt supplies?**

Ans. Such services have been exempted vide Notification No. 12/2017-CT (rate) dated 28<sup>th</sup> June 2017 under entry no. 5.

**Q11. Whether GST is payable on yearly instalments due after 1.4.2016 in respect of spectrum assigned before 1.4.2016?**

Ans. The exemption shall apply only to Service Tax or GST payable on one time charge, payable in full upfront or in instalments, for assignment of right to use any natural resource before 1<sup>st</sup> April 2016. This will not apply to any periodic payment required to be made by the assignee, such as Spectrum User Charges, license fee in respect of spectrum, or monthly payments with respect to the coal extracted from the coal mine or royalty payable on extracted coal which shall be taxable.