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A Newsletter from The Institute of Chartered Accountants of India on GST



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President's Communication



My Esteemed professional colleagues,

The introduction of the Goods and Services Tax (GST) is a noteworthy step in the field of indirect taxes in India. It has benefited the economy in terms of reduction in the overall tax burden on goods and services and also made Indian products competitive in the domestic and international markets. The one tax system in place of number of taxes also reducing the compliance burden. Compliance for first year of GST will be completed once the Annual Return (GSTR-9/9A) and Reconciliation cum Audit Certificate (GSTR-9C) will be filled by the tax payers. In view of the need of the hour and to facilitate stake holders, the government has extended the due date for filing of Forms GSTR 9, 9A and 9C till 30th June, 2019. Also, the availment of input tax credit under GST pertaining to Financial Year 2017-18 is permitted till due date of filling of GSTR 3B of March, 2019, for which a representation was also submitted by ICAI.

The provisions of the GST Amendment Acts, 2018 have come into effect from 1st February, 2019. Some of these changes like limit of aggregate turnover for availing Composition Scheme has been increased to Rs 1.5 crore for all States except some States will have effect from 1st April, 2019. In order to provide Composition Scheme to service providers a new scheme be made available for intra-suppliers of Services or goods or both with a tax rate of 6% (3% CGST + 3% SGST) to those, who are having an annual turnover of up to Rs. 50 lakhs in the preceding Financial Year. Further, w.e.f. 1st April, 2019, the exemption limit has also been raised in case of persons engaged in supply of goods exclusively from 20 lakhs to 40 lakhs except in few States. Government is working to provide a 'Free Accounting and Billing Software' as promised by the

Hon'ble Prime Minister to small taxpayers wherein GSTN is working as nodal office and we are happy to inform that ICAI also helped GSTN in the process.

We at ICAI have been working tirelessly in creating awareness and disseminating knowledge of GST. Shouldering the Government's initiatives of enhancing the training courses for Government officers, GST & Indirect Taxes Committee of ICAI has organised 5 batches of Three days Training Program for officials of Department of Trade and Taxes at Delhi.

Further, more than 6800 workshops, seminars or conferences on GST have been organised by ICAI which have been attended and benefited 7.1 lakh participants. Also, 85 batches of Certificate Courses (10 days) for Chartered Accountants have been organised across the country which have been attended by 6959 participants. Our website www.idtc.icai.org too hold good for online webcasts on GST, topic wise study material on GST including PPT & FAQ's, e-publications, e-learning series on UAE VAT, regular GST/Customs updates, articles, information on upcoming courses, programmes/seminars, e-Newsletter on GST etc.

We are committed to perform our best and continue with the same valiant efforts towards the growth of our country.

With best wishes,

CA. Prafulla P. Chhajed
President, ICAI



GST UPDATES-LAW AND RULES

Services under Reverse Charge Mechanism

Central Government vide Notification No. 29/2018- CT (R) dated 31st Dec, 2018 notified the following amendments in the Notification No. 13/2017- CT (R) dated 28th June, 2017, namely:-

1. Insertion of proviso to item (g) serial number 2:

“Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, -

- (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.”;

Comment: Services provided by GTA to Government departments/local authorities exempted which have taken registration only for the purpose of deducting tax under Section 51 not liable under RCM

2. Insertion of new services to RCM u/s 9(3) of CGST Act under serial number 14, 15 and 16:

3. Clause (h) to the explanation inserted:

Clause (h) states that the provisions of this notification, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures.

Amendment in the meaning of Advance Authorisation

The Central Government vide Notification No. 1/2019- CT dated 15th Jan, 2019 made the following amendments in the Notification No. 48/2018- CT dated 18th October, 2019 with a view to amend the meaning of Advance Authorisation:-

1. Proviso to Serial No. 1

Serial No. 1 column number (2) provides that the supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation shall be deemed exports. To this, a proviso has been added as under:

“Provided that goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply,;

| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service | Comment |
|---------|--|---|---|--|
| (1) | (2) | (3) | (4) | (5) |
| 12 | Services provided by business facilitator (BF) to a banking company | Business facilitator (BF) | A banking company, located in the taxable territory | |
| 13 | Services provided by an agent of business correspondent (BC) to business correspondent (BC). | An agent of business correspondent (BC) | A business correspondent, located in the taxable territory. | |
| 14 | Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to, - (i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act. | Any person other than a body corporate | A registered person, located in the taxable territory.”; | Therefore when Security services are provided to registered persons only then no need to take registration as per Section 23 of CGST Act, 2017, However, when supplier of security services provides services to registered as well as unregistered person then such supplier is required to take registration for supply to unregistered recipient and those under composition. |

Provided further that no such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods.”

Comment: In case of supplies against Advance Authorization, proviso is being inserted to require post-export end-use monitoring based on CA certificate where credit has been availed only. Effect of this amendment will relieve concerns raised by trade since original notification was issued.

2. Omission of words "pre-import" from Explanation 1

Explanation 1 earlier defined the term "advance authorisation" as an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports.

The given notification now aims to omit "on pre-import basis" from the explanation 1 so as to give effect to the above mentioned proviso.

Comment: Please note that the amendment is by way of 'omission' and not 'repeal'. As per General Clauses Act, a repeal will save acts done previous but not so in case of omission. Whether this was always intended and therefore must be given retrospective effect will be a bone of contention. CGST Act does not empower retrospective exemptions under section 11 but whether the same applies to notification under section 147 is to be seen.

GST Amendment Act, 2018 applicable from 1st day of February, 2019

The Central Government vide Notification No. 02/2019 – CT dated 29th Jan, 2019 has provided that the provisions of the CGST (Amendment) Act, 2018 (31 of 2018), except the following shall be applicable from 1st February, 2019:

- clause (b) of section 8, section 17, section 18,
- clause (a) of section 20,
- sub-clause (i) of clause (b) and sub-clause (i) of clause (c) of section 28,

Comment: Please note that these provisions are relatable to the newly inserted section 43A and the changes to section 39 and 140. Care may be taken to identify the effect of the delay in implementation of these provisions as rest of the Amendment Act comes into effect from 1 Feb, 2019.

Change in value of taxable supplies for calculation of tax under composition

The Central Government vide Notification No. 05/2019 – CT dated 29th Jan, 2019 has substituted the rate of tax for suppliers other than (manufacturers and Restaurant service providers) under composition scheme.

| Earlier | Revised | Comment |
|--|---|---|
| An amount calculated at the rate of half per cent of the turnover in State in case of other suppliers. | An amount of tax calculated at the rate specified in rule 7 of the Central Goods and Services Tax Rules, 2017. [Rule-7 provides that rate of tax for suppliers other than (manufacturers and Restaurant service providers) is 0.5% of the turnover of taxable supplies of goods and services in the State or Union territory] | Therefore rate of composition for eligible suppliers other than (manufacturers and Restaurant service providers) is 0.5% of the turnover of taxable supplies of goods and services in the State or Union territory. |

Central Goods and Services Tax (Amendment) Rules, 2019

The Central Government vide Notification No. 03/2019 – Central Tax dated 29th January, 2019 has amended CGST Rules, 2017 details of which are explained below:

| Rule | Change | Comment |
|---|--|--|
| Omission of proviso to Rule 8 | Application for registration | SEZ developer/units are to continue with separate registration (apart from registration in respect of non-SEZ operations) and with this mandate now included by way of second proviso to section 2(51), the rule stands amended” |
| Insertion of Rule 21A | Suspension of registration | With this insertion, where cancellation is applied but continues to appear online, please ensure that suspension order is obtained to avoid late fee. The exemption from late fee is only in respect of returns up to Sept 2018. |
| Insertion of Rule 41A | Transfer of credit on sale, merger, amalgamation, lease or transfer of a business | Please note that this rule is especially where separate registration is obtained under the amended section 25(2). |
| Insertion in Explanation to Rule 42 and Rule 43 | Manner of determination of input tax credit in respect of inputs or input services /capital goods and reversal thereof | |

| | | |
|-------------------------------------|--|--|
| Omission in Rule 53 (1) | Revised tax invoice and credit or debit notes | Consequential changes in relation to enabling provision inserted note vide Rule 53(1)A for issuance of consolidated credit/debit note for multiple invoices issued |
| Insertion of rule 53 (1A) | | Problem of industry has been considered through this amendment as in many industries one credit note is required to be issued for multiple invoices which was earlier not provided in the law. |
| Rule 80 (3) | Annual Return | Consequential changes provided in rule that audit provisions shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force. |
| Insertion in Rule 83 (8) | Provisions related to goods and services tax practitioner | |
| Insertion in Rule 85(3) | Electronic liability register | |
| Insertion in Rule 86(2) | Electronic credit ledger | Section 49 A and Section 49 B are newly inserted sections vide CGST Amendment Act,2018 which provides for utilization of ITC and order of utilization of ITC |
| Insertion of proviso to Rule 91 (2) | Grant of provisional Refund | Where 90% refund is sanctioned in case of zero-rated supplies, the delay in validation of sanction order is not put to rest |
| Insertion of proviso to Rule 91 (3) | | Where payment advice is not encashed within the same year, then revalidation will be required. Since e-payment will be made, this appears to provide trade with a basis to take up delay in crediting refund for any reason |
| Insertion in Rule 96A | Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking | Amendment in Rules consequent to amendment of definition of 'export of services' in IGST Act. |
| Insertion of Form GSTR -02 | | |

| Rule | Existing | Revised | Comment | | | | | | | | |
|--|---|--------------------------------|-------------|--|--|---|--------------------------------|-------------|--|---|--|
| Substitution in heading of Chapter-II | Composition Rules | "Composition Levy" | | | | | | | | | |
| Substitution in Rule 7: | <p>In the Table, against serial number (3), in column (3), for the word "goods", the words, "goods and services" shall be substituted.</p> <table border="1"> <tr> <td>Category of registered persons</td> <td>Rate of tax</td> </tr> <tr> <td>Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter</td> <td>half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory</td> </tr> </table> | Category of registered persons | Rate of tax | Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter | half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory | <table border="1"> <tr> <td>Category of registered persons</td> <td>Rate of tax</td> </tr> <tr> <td>Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter</td> <td>half per cent. of the turnover of taxable supplies of goods in the State or Union territory</td> </tr> </table> | Category of registered persons | Rate of tax | Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter | half per cent. of the turnover of taxable supplies of goods in the State or Union territory | Therefore rate of composition for eligible suppliers other than (manufacturers and Restaurant service providers) is 0.5% of the turnover of taxable supplies of goods and services in the State or Union territory. Extreme care should be taken that this rate of 1% (CGST-SGST) will apply on the entire 'taxable turnover' in the State |
| Category of registered persons | Rate of tax | | | | | | | | | | |
| Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter | half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory | | | | | | | | | | |
| Category of registered persons | Rate of tax | | | | | | | | | | |
| Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter | half per cent. of the turnover of taxable supplies of goods in the State or Union territory | | | | | | | | | | |

| | | | |
|---|--|--|---|
| Substitution in 2nd proviso to Rule 83 (3) | Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of [eighteen months] from the appointed date | Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of [thirty months] from the appointed date | Allows time to complete the exam after enrolment. |
| Substitution in Rule 89 (2) (f) | (f) a declaration to the effect that the SEZ unit or the SEZ developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a SEZ unit or a SEZ developer. | (f) a declaration to the effect that tax has not been collected from the SEZ unit or the SEZ developer, in a case where the refund is on account of supply of goods or services or both made to a SEZ unit or a SEZ developer; | Determination of question of whether tax incidence has not been passed on, now flows from customer's (SEZ) certificate. |

Integrated Goods and Services Tax (Amendment) Rules, 2018

Central Government vide Notification No. 04/2018- Integrated Tax dated 31st December, 2018 notified the following rules as Integrated Goods and Services Tax (Amendment) Rules, 2018:-

1. Rule 3 in clause (h):

The words "the service shall be deemed to have been provided all over India and" inserted after the words "in the case of advertisements over internet" to clarify that the services provided over internet is not specific to 1 or more State or Union territory and shall be deemed to be provided all over India.

2. Insertion of Rule 4:

The place of supply in case of the supply of services attributable to different States or Union territories, under subsection (3) of section 12 of the IGST Act, 2017 shall be:-

- a. Where such immovable property or boat or vessel is located in more than one State or Union territory- each of the respective States or Union territories and
- b. In the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory- to be determined in the following manner namely:-
 - i. Services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called and services ancillary to such services:
 - 1) Where such property is a single property located in two or more contiguous States or Union territories or both: the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.
 - 2) Cases except where such property is a single property located in two or more contiguous States or Union territories or both: the supply of services shall be treated as

made in each of the respective States or Union territories, in proportion to the number of nights stayed in such property.

- ii. All other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc : the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory
- iii. services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services: the supply shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, determined on the basis of a declaration made to the effect by the service provider.

3. Insertion of Rule 5:

The place of supply in case of supply of services attributable to different States or Union territories, under subsection (7) of section 12 of the said Act, in the case of-

- a. services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or



- b. services ancillary to the organisation of any such events or assigning of sponsorship to such events,

where the services are supplied to a person other than a registered person, the event is held in India in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by application of the generally accepted accounting principles.

4. Insertion of Rule 6: Supply under section 12(11) of the IGST Act

In the case of supply of services relating to a leased circuit, where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined in the following manner, namely:-

- a. The number of points in a circuit shall be determined in the following manner:
 - i. in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;
 - ii. any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point;
- b. the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory.

5. Insertion of Rule 7

In the case of services supplied in respect of goods which are required to be made physically available by the recipient to the supplier, or to a person acting on behalf of the supplier, or in the case of services supplied to an individual, represented either as the recipient or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory,

shall be taken as being in each of the respective States or Union territories, and the proportion of value attributable to each such State and Union territory in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of

the services in each such State or Union territory, as the case maybe, shall be determined in the following manner, namely:-

- a. in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed;
- b. in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;
- c. in the case of services supplied to individuals, by applying the generally accepted accounting principles.

6. Insertion of Rule 8

In case of supply of services directly in relation to an immovable property, including services supplied by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 4, mutatis mutandis.

7. Insertion of Rule 9

In case of supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, where the location of the supplier or the location of the recipient is outside India, and where such services are provided in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 5, mutatis mutandis".



GST UPDATE-EXEMPTIONS UNDER GST

Exemption from taking Registration

The Central Government vide Notification No. 06/2019 – Central Tax dated 29th January, 2019 & Notification No. 03/2019 – IT dated 29th January, 2019 has provided that for the purpose of exemption from registration by service providers of Jammu & Kashmir, the threshold limit of aggregate value of supplies, to be computed on all India basis will be 10 lakh rupees.

Notification to exempt tax on goods or services received from unregistered person rescinded

The Central Government vide Notification No. 01/2019-Central Tax (Rate) dated 29th January, 2019 has rescinded the Notification No. 8/2017-CT (R) dated the 28th June, 2017 which exempts intra-State supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon.

Therefore, from 1st Feb, 2019 such transaction has become taxable in the hands of recipient.

Comment: However, as per CGST Amendment Act, 2018, Govt. by notification specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as recipient of such supply of goods or services or both whereas no notification in this regard has been issued yet therefore, no tax will be liable on such transactions until any notification specifying categories of goods or services or both come into force.

Exemption from Registration not applicable to specified Job workers

The Central Government vide Notification No. 02/2019 – Integrated Tax dated 29th January, 2019 has provided that the job workers who are involved in making supply of services in relation to Live poultry i.e fowls of the species Gallus domesticus, ducks, geese, turkeys and guinea fowls are compulsorily required to take registration.

Further, it is also provided that job workers who are involved in making supply of services in relation to Jewellery, goldsmiths' and silversmiths' wares and other articles are eligible for exemption from registration where such job workers engaged in making inter-State supply of services to a registered person.

This notification will be effective from 1st Feb, 2019.

Exemption from TDS -Supplies made by Government Departments and PSUs to other Government Departments and vice-versa.

Central Government vide Notification No. 73/2018 – CT dt.31st Dec, 2018 notified exemption to supplies made by Government Departments and PSUs to other Government Departments and vice-versa from TDS and thus insert the following proviso after the second proviso, namely:-

“Provided also that nothing in this notification shall apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the said Act.”

Amendment in exemption list of certain services

The Central Government vide Notification No. 28/2018- CT (R) dt.31st Dec, 2018 hereby makes the following amendments in the Notification No.12/2017- CT (R), dt.the 28th June, 2017, namely:

- 1. Insertion of Serial Number 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.

Comment: Only GTA services are exempted. Care must be taken where goods transport services are provided under fixed-price contracts to these departments.

- 2. Insertion of Serial Number 27A:** Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).

Comment: This exemption entry is a clear indication that the said 'services' were taxable for the past period and continues to be taxable in all other cases of account holders. This has been a point attracting much media in the recent past about services at 'no charge' by banks to account holders.

- 3. Insertion of serial number 74A:** Services provided by rehabilitation professionals recognized under the Rehabilitation Council of India Act, 1992 (34 of 1992) by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961).

- 4. Insertion of meaning of “financial institution” in clause (zaa)**

“(zaa) “financial institution” has the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934).”

GST UPDATE- CLARIFICATIONS



Clarification on certain issues related to GST

The Central Government vide Circular No. 76/50/2018-GST dated 31st December, 2018 clarified certain issues under the GST Law as under:-

| Sl. No. | Issue | Clarification |
|---------|---|---|
| 1. | Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST? | <p>a. Intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST.</p> <p>b. N. No. 36/2017-CT (R) and N. No. 37/2017- IGST (R) notified that such supply to any registered person would be subject to GST on reverse charge basis.</p> <p>c. Such supply to an unregistered person is also a taxable supply under GST but is not covered under N. No. 36/2017-CT (R) and N. No. 37/2017- Integrated Tax (Rate).</p> <p>d. It is clarified that the respective Government departments shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person subject to the provisions of sections 22 and 24 of the CGST Act.</p> |
| 2. | Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return? | <p>It is clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax.</p> <p>It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.</p> <p>Comment: Penalty cannot be imposed and adjudicated without issuance of SCN.</p> |
| 3. | In case a debit note is to be issued under section 142(2) (a) of the CGST Act or a credit note under section 142(2)(b) of the CGST Act, what will be the tax rate applicable – the rate in the pre-GST regime or the rate applicable under GST? | <p>It is clarified that in case of revision of prices, after the appointed date, of any goods or services supplied before the appointed day thereby requiring issuance of any supplementary invoice, debit note or credit note, the rate as per the provisions of the GST Acts (both CGST and SGST or IGST) would be applicable.</p> |
| 4. | Applicability of the provisions of section 51 of the CGST Act (TDS) in the context of N. No.. 50/2018-CT dt. 13.09.2018. | <p>The doubt regarding the applicability of long line mentioned in clause (a) of N. No. 50/2018- CT dt. 13.09.2018 has been clarified that it is applicable to both the items (i) and (ii) of clause (a) of the said notification.</p> <p>In other words, the provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which fifty one per cent. or more participation by way of equity or control is with the Government.</p> |
| 5. | What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961? | <p>Section 15(2) of CGST Act specifies that the value of supply shall include “any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier.”</p> <p>Thus, It is clarified that as per the above provisions, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act.</p> <p>Comment: Although TCS is only a mode of collection of tax, it appears that the amount of TCS paid by Buyer to Supplier will go to settle Buyer’s tax liability or may even be refunded. Income-tax is a tax on income and not a tax on Person.</p> |

| | | |
|----|---|---|
| | | As such, seeking its exclusion from valuation on the premise that TCS is not 'retained' by Supplier may not be readily accepted by Government as there is no such premise laid down as a test in section 15. And objections to inclusion of TCS may be resisted as an aspect that flows from the operation of section 15(2) and not although not part of 2(31). But the immediate concern is that calculation of GST on 'value + TCS' is cumbersome. Please also note that this clarification will have retrospective operation. |
| 6. | Who will be considered as the owner of the goods" for the purposes of section 129(1) of the CGST Act? | It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods. |

Denial of composition option by tax authorities and effective date thereof

Central Government vide Circular No. 77/51/2018-GST dated 31st December, 2018 clarified the issue related to the effective date of withdrawal from the composition scheme as per Rule 6 of the CGST Rules, 2017 in case of :-

- A. Where the composition taxpayer has exercised such option to withdraw.

The effective date shall be the date indicated by him in his intimation/application filed in FORM GST CMP-04 but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed.

If at any stage it is found that he has contravened any of the provisions of the CGST Act or the CGST Rules, action may be initiated for recovery of tax, interest and penalty.

- B. Where action has been initiated by the tax authorities to deny such option

The effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules.

As per section 10(5) of the CGST Act, the proceedings would have to be initiated under the provisions of section 73/ 74 of the CGST Act for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in FORM GST CMP-07. It is also clarified that the registered person shall be liable to pay tax under section 9 from the date of issue of the order in FORM GST CMP-07. Provisions of section 18(1)(c) of the CGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order.

Clarification on export of services under GST

Central Government vide Circular No. 78/52/2018-GST dated 31st December, 2018 clarified the tax treatment in case

where an exporter of services outsources a portion of the services contract to another person located outside India. Hence involve two supplies –

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

The total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) read with section 13(2) of the IGST Act are satisfied.

Further, the supplier of services located in India would be liable to pay IGST on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. And said supplier located in India would be eligible for taking input tax credit of the IGST so paid.

Moreover, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of the services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the IGST has been paid by the supplier located in India for import of services and RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India.

Comment- Where an exporter of services outsources a portion of the services contract to another person located outside India, full value of consideration will be treated as export of services provided the IGST has been paid on import of services and RBI allow that a part of consideration for such exports can be retained outside India. Care should be taken to maintain correlation between the work outsourced and the export contract in respect of which such outsourcing is involved. It is

common to find such arrangements with associated entities where correlation may not be rigorously maintained.

Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs)

The Central Government vide Circular No. 82/01/2019- GST dated 1st January, 2019 has clarified that Programmes offered by IIMs are exempt from tax as below in brief :

| Period | Exempt from GST | Not exempt from GST | Exemption under |
|--------------------------------------|--|--|--|
| 1st July, 2017 to 30th January, 2018 | 3 Programmes (mentioned above) | (i) One- year Post Graduate Programs for Executives, (ii) Any programs other than those mentioned at Sl. No. 67 of NN 12/2017- CT (Rate) (iii) All short duration executive development programs or need based specially designed programs (less than 1 year). | Sl. No. 66 of N. No.. 12/2017- CT (R) |
| 31st January, 2018 onwards | All long duration programs (one year or more) conferring degree/ diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one- year Post Graduate Programs for Executives. | All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law. | From 31.01.2018 to 31.12.2018- Sno.66 of NN 12/2017- - CT (R) OR Sno.67 of NN 12/2017- CT (R) From 1.01.2019-Sno.66 of NN 12/2017- CT (R) |

Clarification on GST rate applicable on supply of food and beverage services by educational institution

The Central Government vide Circular No. 85/04/2019- GST dated 1st January, 2019 clarified that supply of food and beverage services by educational institution to its students, faculty and staff is eligible for exemption under GST under Notification No. 12/2017-CT (R) although the rate of 5% has been prescribed on supply of food and beverages services under N. No.. 11/2017-CT (R). However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is liable to GST @ 5%.

A supply which is specifically covered by any entry of Notification No. 12/2017-CT (R) dated 28-06-2017 is exempt from GST notwithstanding the fact that GST rate has been prescribed for the same under Notification No. 11/2017-CT (R) dated. 28.06.2017.

In order to remove any doubts on the issue, Explanation 1 to Entry 7(i) of Notification No. 11/2017-CT (R) dated 28.06.2017 has been amended vide Notification No. 27/2018-CT (R) dated 31.12.2018 to omit from it the words "school, college". Further, heading 9963 has been added in Column (2) against entry at Sl. No. 66 of Notification No. 12/2017-CT (R) dated 28.06.2017, vide Notification No. 28/2018-CT (R) dated 31.12.2018.

GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company

The Central Government vide Circular No. 86/05/2019- GST dated 1st January, 2019 clarified that the following two issues regarding Services provided by Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company:-

- i. Issue 1: Clarification on value of services by BF/BC to a banking company

It has been clarified that the banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.

Banking company is the service provider in the business facilitator model or the business correspondent model operated by a banking company as per RBI guidelines. Since banks pay reasonable commission/fee to the BC and the agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. Thus, it is clearly specified that the bank is responsible to the customer for acts of omission and commission of the Business Facilitator/Correspondent.

- ii. Issue 2: Clarification on the scope of services by BF/BC to a banking company with respect to accounts in rural areas

It has been clarified that for the purpose of availing exemption from GST under Sl. No. 39 of Notification No. 12/2017- CT (R) dated 28.06.2017 (services provided in relation to "accounts in its rural area branch" by BF/BC to a banking company), the conditions are that the services provided by a BF/BC to a banking company in their respective individual capacities should fall under the Heading 9971 and that such services should be with respect to accounts in a branch located in the rural area of the banking company.

Central Goods and Services Tax (Amendment) Act, 2018- Clarification regarding section 140(1) of the CGST Act, 2017

The Central Government vide Circular No. 87/06/2019- GST dated 2nd January, 2019 clarified that the CENVAT credit of service tax paid under section 66B of the Finance Act, 1994 was available as transitional credit under section 140(1) of the CGST Act and that legal position has not changed due to amendment of section 140(1) on account of following reasons:

1. The transition of credit of taxes paid under section 66B of the Finance Act, 1994 was never intended to be disallowed under section 140(1) and therefore no such remark was present in the "Rationale/ Remarks" column (at Sl. No. 37) of the draft proposals for amending the GST law.
2. Under tax statutes, the word "duties" is used interchangeably with the word "taxes" and in the present context, the two words should not be read in a disharmonious manner.
3. The amendment in provisions of section 140(1) and the explanations to section 140 need to be read harmoniously such that neither any provision of the amendment becomes otiose nor does the legislative intent of the amendment get defeated.

Further, it has been decided not to notify the clause (i) of sub-section (b) of section 28 and clause (i) of sub-section (c) of section 28 of CGST (Amendment) Act, 2018 which link Explanation 1 and Explanation 2 of section 140 to section 140(1). This would ensure that the credit allowed to be transitioned under section 140(1) is not linked to credit of goods in stock, as provided under Explanation 1, and credit of goods and services in transit, as provided under Explanation 2.

Clarification related to treatment of sales promotion scheme under GST

The Central Government vide Circular No. 92/11/2019-GST dated 07th March, 2019 clarified the following issues raised with respect to tax treatment of sales promotion schemes under GST :-

1. Free samples and gifts

Since the consideration is an important element of the definition supply, therefore the samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the said Act.

Further, clause (h) of sub-section (5) of section 17 of the said Act clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" as per Schedule I of the said Act, the supplier would be eligible to avail of the ITC.

2. Buy one get one free offer

It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per section 8 of the said Act. And, ITC shall be available to the supplier in relation to such supply.

3. Discounts including 'Buy more, save more' offers

Discounts offered by the suppliers to customers including staggered discount under "Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount. Further, the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply.

4. Secondary Discounts

Value of supply shall not include any discount by way of issuance of credit note(s), except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied. There is no impact on availability or otherwise of ITC in the hands of supplier.

Comment: This is a much needed clarification that is issued before filing Annual Returns. Financial / commercial credit notes are now well understood and permitted except that output tax adjustment is clearly barred if the conditions of 15(3) are not satisfied. Although credit to Supplier is not restricted, there seems to be no mention of effect under rule 37 to Recipient when such financial / commercial credit notes are issued.

Another important aspect that does not find a mention here, is that where consideration takes 'non-monetary form' whether those samples would be free from tax. Care must be taken to the ominously repeated expression 'except when liable under schedule I'. Please consider which para might cover disposal of samples and gifts under schedule I. Here, even permanent transfer or disposal of business assets is also covered. And 'business assets' is not an expression that is restricted to 'fixed assets', it can include 'inventory' also. So, a view may be taken that even inventory disposed off as a sample may be covered under Schedule I and may not require reversal of ITC.

And where credit is reversed on gifts given, very subtly a mention is made that credit reversal required includes capital goods credit also, this is a new one as complexity in computing rule 43 in relation to gifts may be a challenge.

Complete bar on tax adjustment in case of 'secondary discounts' removes ambiguity especially for dealers who are unable to impress upon OEMs.

TCS would not be includible in the value of supply under GST

The Central Government vide Corrigendum to Circular No. 76/50/2018-GST dated 31st December, 2018 has clarified that Tax collection at source (TCS) is not a tax on goods but an interim levy on the possible "income" arising from the sale of goods by the buyer and to be adjusted against the final income- tax liability of the buyer. Accordingly, for the purpose of determination of value of supply under GST, Tax collected at

source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

Comment: It is a welcome relief that Government has issued this Corrigendum that 'taxable value' under section 15 will not include TCS imposed under Income-tax Act. With TCS having been introduced on certain new articles like motor cars, the previous circular had caused lot of distress to industry.

GST UPDATE-EXTENSION IN DUE DATE

Extension in the due date for availing ITC on the invoices or debit notes issued during the FY 2017-18

With a view to remove difficulties arising in giving effects to the provisions of sub-section (4) of section 16 and sub-section (3) of section 37, the Central Government vide Order No. 02/2018-CT dated 31st Dec, 2018 brought in Central Goods and Services Tax (Second Removal of Difficulties) Order, 2018 providing for :-

1. Insertion of proviso to sub-section (4) of section 16 of the Act

"Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019."

2. Insertion of proviso to sub-section (3) of section 37 of the Act

"Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the

details under subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019."

Comment: Please note that there is no requirement to await another specific extension of time for filing GSTR 1 for 17-18.

Extension in due date for furnishing of annual returns in FORM GSTR-9, GSTR-9A and reconciliation statement in FORM GSTR-9C for the FY 2017-2018 till 30.06.2019.

With a view to remove difficulties arising in filing annual return, the Central Government vide Order No. 03/2018-CT dated 31st Dec, 2018 brought in Central Goods and Services Tax (Third Removal of Difficulties) Order, 2018 providing for extension in filing of annual return by substituting letters and word "31st March, 2019" with "30th June, 2019" under section 44 of the CGST Act, 2017.

Comment: Extension of due date is a positive step providing enough time for taxpayers to understand and furnish the required details as well as preparation and testing time to GSTIN. Trade expected a complete overhaul of this Form but Government's intention seems conspicuous by the limited number of changes in the form and the paucity of explanation in the special instructions appended.

Extension in the time limit for furnishing the Various Forms / returns

| S. No. | Particulars | Form Number | Existing / Earlier due date | Extended due date | N. No.. |
|--------|--|------------------|-----------------------------|-------------------|--|
| 1. | The time limit for furnishing the return for the newly migrated taxpayers for the period Jul, 2017 to Feb, 2019. | GSTR-3B / GSTR-1 | 31st Dec, 2018 | 31st Mar, 2019 | NNo. 68/2018 –CT N No. 69/2018 –CT N No. 70/2018 – CT N No. 71/2018 – CT N No. 72/2018 – CT dt.31st Dec, 2018 |

| | | | | | | |
|----|---|-------------|-----|----------------|------------------|--------------------------------------|
| 2. | The time limit for furnishing the declaration in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to December, 2018 | FORM ITC-04 | GST | 31st Dec, 2018 | 31st March, 2019 | N No. 78 /2018 – CTdt.31st Dec, 2018 |
|----|---|-------------|-----|----------------|------------------|--------------------------------------|

Waiver of late fees leviable on delayed furnishing of returns

The Central Government vide Notification No. 75/2018 – Central Tax/Notification No. 77/2018 – Central Tax dated 31st December, 2018 notified amendment in the Notification No 4/2018- CT dated 23rd January, 2018/ Notification No 73/2017- Central Tax dated 29th December, 2017 by inserting the following proviso in the notification:-

“Provided further that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who failed to furnish the details of outward supplies in FORM GSTR-3B/GSTR-1/GSTR-4 for the months/quarters from July, 2017 to September, 2018 by the due date but furnishes the said details in FORM GSTR-1 between the period from 22nd December, 2018 to 31st March, 2019.”.

Comment: Late fee shall be completely waived for all such taxpayers who are in default as on the date of this notification for failure to file FORM GSTR-1, FORM GSTR-3B and FORM GSTR-4 for the months / quarters July, 2017 to September, 2018.

Due dates for furnishing FORM GSTR-1 for the months of April, May and June, 2019

The Central Government vide Notification No. 11/2019 – Central Tax dated 07th March, 2019 notified the due dates for furnishing the details of outward supply of goods or services or

both in FORM GSTR-1 for the period April to June, 2019 as 31st July, 2019 by such class of registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year.

Further, Central Government vide Notification No. 12/2019 – Central Tax dated 07th March, 2019 notified extension in the time limits for furnishing the details of outward supplies in FORM GSTR-1 for each of the months from April, 2019 to June, 2019 till 11th day of the month succeeding such month by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year.

[Notification No. 11/2019 – Central Tax and Notification No. 12/2019 – Central Tax dated 07th March, 2019]

Due dates for furnishing of FORM GSTR-3B for the months of April, May and June, 2019

The Central Government vide Notification No. 13/2019 – Central Tax dated 07th March, 2019 specified that the due date for filing the return in FORM GSTR-3B for each of the months from April, 2019 to June, 2019 shall be 20th day of the month succeeding such month.

Further, the liability towards tax, interest, penalty, fees or any other amount payable under the said Act shall be discharged not later than the last date on which he is required to furnish the said return as specified above.

GST UPDATE - GST RATE ON REAL ESTATE SECTOR

GST Update- GST rate on real estate sector

GST Council in the 34 meeting held on 19 March, 2019 at New Delhi discussed the operational details for implementation of the recommendations made by the council in its 33 meeting for lower effective GST rate of 1% in case of affordable houses and 5% on construction of houses other than affordable house. The council decided the modalities of the transition as follows.

Option in respect of ongoing projects:

- The promoters shall be given a one-time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019.

- The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit new rates shall apply.

New tax rates:

- The new tax rates which shall be applicable to new projects or on-going projects which have exercised the above option to pay tax in the new regime are as follows.
 - New rate of 1% without input tax credit (ITC) on construction of affordable houses shall be available for,
 - all houses which meet the definition of affordable houses as decided by GSTC (area 60 sqm in metros / 90 sqm in non- metros and value upto RS. 45 lakhs), and

- (b) affordable houses being constructed in on-going projects under the existing central and state housing schemes presently eligible for concessional rate of 8% GST (after 1/3 land abatement).
- (ii) New rate of 5% without input tax credit shall be applicable on construction of,-
 - a. All houses other than affordable houses in on-going projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019.
 - b. All houses other than affordable houses in new projects.
 - c. Commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions for the new tax rates:

5. The new tax rates of 1% (on construction of affordable) and 5% (on other than affordable houses) shall be available subject to following conditions,-
 - a. Input tax credit shall not be available,
 - b. 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

Transition for on-going projects opting for the new tax rate:

Ongoing projects (buildings where construction and booking both had started before 01.04.2019) and have not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.

- 6.2 The transition formula approved by the GST Council, for residential projects (refer to para 4(ii)) extrapolates ITC taken for percentage completion of construction as on 01.04.2019 to arrive at ITC for the entire project. Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined. Thus, transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safeguards.
- 6.3 For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the on-going projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

Treatment of TDR/ FSI and Long term lease for projects commencing after 01.04.2019

The following treatment shall apply to TDR/ FSI and Long term lease for projects commencing after 01.04.2019.

- 7.1 Supply of TDR, FSI, long term lease (premium) of land by a land owner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.
- 7.2 The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM).
- 7.3 The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate.
- 7.4 The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion. Decisions from para 7.1 to 7.4 are expected to address the problem of cash flow in the sector

Amendment to ITC rules:

8. ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects. The change would clearly provide procedure for availing input tax credit in relation to commercial units as such units would continue to be eligible for input tax credit in a mixed project.
9. The decisions of the GST Council have been presented in this note in simple language for easy understanding. The same would be given effect to through Gazette notifications/ circulars which alone shall have force of law.



CUSTOM UPDATES

Changes made in Circulars issued earlier under the CGST, Act, 2017 consequent to GST amendment Act,2018

The Central Government vide Circular No. 88/07/2019-GST dated 1st Feb,2019 has amended various circulars issued earlier under the CGST Act, 2017 with effect from 01.02.2019, to the extent detailed in the table below:

| Circular No. | Existing | Revised |
|--|---|--|
| Circular No. 8/8/2017 dated 04.10.2017 | It is clarified that the acceptance of LUT for supplies of goods to countries outside India Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. It may also be noted that the supply of services to SEZ developer or SEZ unit under LUT will also be permissible on the same lines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange. | It is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. |
| Circular No. 38/12/2018 dated 26.03.2018 | <p>Para 2: On completion of the job work, the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within one year in case of inputs or within three years in case of capital goods.</p> <p>Para 3: Further, the time frame of one year / three years for bringing back or further supplying the inputs / capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply.</p> <p>Para 6.1: In case both the principal and the job worker are located in the same State, job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit.</p> <p>In case both the principal and the job worker are located in the different States, job worker is required to obtain registration only if his aggregate turnover of the inter-State supply of taxable services exceeds the specified threshold limit.</p> <p>Para 9.4: The value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.</p> <p>Para 9.6: If goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration</p> | <p>Para 2: The principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within the time specified under section 143.</p> <p>Para 3: Further, if the time frame specified under section 143 for bringing back or further supplying the inputs / capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply.</p> <p>Para 6.1: Now, it is clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.</p> <p>Para 9.4: The value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.</p> <p>Para 9.6: If the inputs or capital goods are neither returned nor supplied from the job worker's place of business / premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year / three years has expired. The date of supply shall be the date on which such inputs or</p> |

| | | |
|--|---|--|
| | | capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax |
| Circular No. 41/15/2018 dated 13.04.2018 | Para 2(k): In case the proposed tax and penalty are not paid within 7 days from the date of the issue of the order of detention in FORM GST MOV-06, proposing confiscation of the goods and conveyance and imposition of penalty. | Para 2(k): In case the proposed tax and penalty are not paid within 14 days from the date of the issue of the order of detention in FORM GST MOV-06, proposing confiscation of the goods and conveyance and imposition of penalty. Accordingly, Form GST MOV -08 & 09 has been revised. |
| Circular No. 58/32/2018 dated 04.09.2018 | Currently, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, it is clarified that as an alternative method, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B | It may be noted that all such liabilities may be discharged by the taxpayers, either voluntarily in FORM GST DRC-03 or may be recovered vide order uploaded in FORM GST DRC-07, and payment against the said order shall be made in FORM GST DRC-03. It is further clarified that the alternative method of reversing the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B would no longer be available to taxpayers. |
| Circular No. 69/43/2018 dated 26.10.2018 | Although the provisions of CGST (Amendment) Act, 2018 have not yet been brought into force, it will be prudent for the field formations may not to issue notices for non-filing of return for taxpayers who have already filed an application for cancellation of registration under section 29 of the CGST Act. | Relied to trade that field formations may not issue notices for non-filing of return for taxpayers who have already filed an application for cancellation of registration under section 29 of the CGST Act |

[Circular No. 88/07/2019-GST dated 1st Feb,2019]

Allowance of Manufacturing or other operations undertaken in bonded warehouses

The Central Government vide Circular no. 3/2019-Customs dated 31st Jan,2019 has clarified that certain operations to fulfill statutory obligations such as labeling/affixing RSP etc. to fulfill statutory compliance requirements are allowed in all custom bonded warehouse (whether public warehouse or private) without the requirement of taking permission under Section 65 of the Customs Act.

[Circular no. 3/2019-Customs dated 31st January,2019]

Exemption of temporary importation of private road vehicles from IGST and compensation cess

The Central Government vide N. No.86/2018 – Customs dt.31st Dec, 2018 notified amendments to the N. No. 296/76-Customs, dt.the 2nd August, 1976, namely:-

- i. Insertion of the words, brackets and figures, “and subsection (12) of section 3 of Customs Tariff Act, 1975 (51 of 1975) after the words, figures and brackets, “the Customs Act, 1962 (52 of 1962)”, in the opening paragraph: The exemption powers of the Central Government are provided under both Customs Act, 1962 as well as Customs Tariff Act, 1975.
- ii. Substitution of words “additional duty” with the words “integrated tax and goods and services compensation

cess”: Temporary importation of private road vehicles are exempted from IGST and compensation cess, earlier called as additional duty in pre-GST regime.

[N. 86/2018 – Customs dt.31st Dec, 2018]

Deferment of circular regarding Electronic Sealing-Deposit in and removal of goods of goods from Customs Bonded Warehouses

Central Government vide Circular No. 54/2018 dt.31st Dec, 2018 provides for the deferment of the Circular No. 19/2018 dt. 18th June, 2018- RFID sealing of goods deposited and removal from Customs Bonded Warehouses. The implementation of the said circular was earlier deferred vide Circular No. 41/2018 dt. 30th October, 2018 to 1st January, 2019. The implementation of the circular thus stands deferred till the date notified.

[Circular No. 54/2018 dt.31st Dec, 2018]



FORTH COMING EVENTS UNDER THE AEGIS OF INDIRECT TAXES COMMITTEE

April 27, 28, May 4, 5, 11, 12, 18, 19, 25 and 26

Place : Chennai • CPE Hours : 25+5 Hours

Title of the Seminar : Certificate Course of GST
Contact Details : SIRC of ICAI
 Ph: (044) 39893989
 Email: sirc@icai.in

Title of the Seminar : Certificate Course of GST
Contact Details : EIRC of ICAI
 Ph: 033 3021 1261
 Email: eircevents@icai.in

April 20,21,27, 28, May 4, 5, 11, 12, 25 and 26

Place : Kolkata • CPE Hours : 25+5 Hours

May 4, 5, 11, 12,18,19,25,26, June 1 and 2

Place : Mumbai • CPE Hours : 25+5 Hours

Title of the Seminar : Certificate Course of GST
Contact Details : WIRC of ICAI
 Ph: 022-3367 1421
 Email: wircevents@icai.in

Title of the Seminar : Certificate Course of GST
Contact Details : GST & Indirect Taxes Committee
 Ph: 0120-3045954
 Email: ccgst@icai.in

April 20,21, May 4, 5, 11, 18, 19, 25, 26 and June 1

Place : Delhi • CPE Hours : 25+5 Hours



INDIRECT TAXES COMMITTEE (IDTC) OF ICAI A ONE STOP DESTINATION FOR INDIRECT TAXES i.e. IDTC website: www.idtc.icai.org

The Indirect Taxes Committee of ICAI has launched its website viz. www.idtc.icai.org to provide the users a well set platform for sharing and gaining knowledge on indirect taxes and easy accessibility to the Indirect taxes Committee. The Committee works relentlessly towards keeping the members abreast with the latest changes in the Indirect tax laws vide various mediums like, organising programmes, updating study materials, sending regular updates etc.

Main features:

- * Regular Indirect Taxes Updates
- * Knowledge Bank of Indirect Taxes – Articles, Legal Updates etc.
- * Publication on Excise, Service Tax, VAT, GST etc.- (Available for free download and online ordering)
- * Recordings of Live Webcasts
- * E-learning on Service Tax, Excise, Customs, CST
- * Upcoming events
- * Details of Certificate Courses, Programme, Seminars etc.
- * Links of related important website
- * Connect with Indirect Taxes as a faculty/author of the publication etc.

Your suggestions on the website are also welcome at idtc@icai.in

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 for help please visit:<http://help.icai.org/>

KEY AMENDMENTS IN TAXABLE EVENT ‘SUPPLY’

In terms of Article 366(12A) as inserted in the Constitution vide the Constitution (101st Amendment) Act, 2016, the term “Goods and Services Tax”, is defined to mean “any tax on supply of goods or services or both except taxes on the supply of the alcoholic liquor for human consumption”. Essentially, ‘supply’ is the most critical and pivotal term under the GST regime, which is the centric point to determine levy & collection of GST.

Definition of term ‘supply’ is contained in Section 7 of the CGST Act, 2017 (“the CGST Act”) which is applicable to the IGST Act, 2017 vide Section 2(21) and Section 20 thereof, and also applicable to the UTGST Act vide Section 21 thereof read with the similar provisions in the respective states GST Acts. Section 7 of the CGST Act is amended retrospectively w.e.f. July 1, 2017 vide the CGST Amendment Act, 2018. In addition, certain crucial changes have been made in Schedule I and III of the CGST Act, applicable w.e.f. February 1, 2019.

This article deciphers to explain the key amendments in the meaning and scope of term ‘supply’ i.e. the taxable event in GST, made vide the CGST Amendment Act, 2018 along with discussing implications of these changes and further suggests other changes which are also required to make GST – a Good and Simple Tax.

I. Delinking Schedule II from ‘includes’ portion of term ‘supply’ w.e.f. July 1, 2017

Prior to the amendment in Section 7 of the CGST Act, Section 7(1)(d) thereof included the activities specified in Schedule II as supply, in the following manner:

“7. (1) For the purposes of this Act, the expression “supply” includes—

.....

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.....”

Considering the fact that if Schedule-II independently treats something as supply, then the relevance of main clauses of the definition of term ‘supply’ would be defied, therefore, Section 7(1) of the CGST Act is amended with retrospective effect (w.e.f. July 1, 2017) vide the CGST Amendment Act, 2018 to omit clause (d) thereof. Instead, new sub-section (1A) is inserted under Section 7 of the CGST Act, which provides that, where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule-II.



This ensures that the activities/ transactions as per Schedule II is to determine only whether the same is supply of goods or services. Hence, activities/ transactions listed in Schedule II (as supply of goods or supply of services) shall be taxed only when they constitute ‘supply’ in accordance with provisions of Section 7(1)(a), (b) and (c) of the CGST Act.

It is to be noted that the above amendment in definition of ‘supply’ are made retrospectively applicable. Thus, there shall not be any past litigation on account of any transaction merely covered under Schedule II, but otherwise not a ‘supply’.

II. Amendment in Schedule I: Import of services by unregistered persons from related persons outside India is made taxable

Prior to February 1, 2019, Para 4 of Schedule I to the CGST Act covered import of services by a taxable person from a related person or from any other establishment outside India in the course or furtherance of business, to be treated as supply for applicability of GST even if no consideration is involved.

The words ‘taxable person’ in Para 4 of Schedule I is replaced by ‘person’ vide the CGST Amendment Act, 2018, effective from February 1, 2019. Meaning thereby, import of services by entities which are not registered under GST (say, they are only making exempted supplies) but are otherwise engaged in business activities shall be liable to tax when received from a related person or from any of their establishments outside India. Hence, such person will be required to obtain compulsory registration under Section 24 of the CGST Act for discharging reverse charge liability to pay GST.

III. Amendment in Schedule III: Merchant trading, High seas sales and In-bond sales to be treated neither as supply of goods nor services

One of the significant amendments made by the CGST Amendment Act, 2018 (effective from February 1, 2019), is inclusion of following three types of transactions in Schedule III to the CGST Act (i.e. activities or transactions which shall be treated neither as a supply of goods nor a supply of services):

- ✓ **Merchant trading** i.e. supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into the taxable territory.
- ✓ **High seas sales** i.e. sale carried out by the actual consignee shown in the Bill of Lading to another buyer while the goods are yet on high seas or after their dispatch from the port of loading and before entering the customs frontier of India.
- ✓ **In-bond sale** i.e. sale of imported goods from customs bonded warehouses.

This amendment put on rest various discussions being made regarding taxability of above mentioned three types of transactions in GST.

Further, through corresponding amendment in Section 17(3) of the CGST Act (w.e.f. February 1, 2019), it is clarified that the expression “value of exempt supply” for the purpose of denial of input tax credit/reversal of common input tax credit shall not include the value of activities or transactions specified in Schedule III, except those specified in Para 5 of the said schedule. In other words, the above-mentioned transactions viz. merchant trading, high seas sales, in-bond sales shall not be regarded as exempt supply for reversal of input tax credit.

Suggestions on taxable event ‘supply’ under Section 7 of the CGST Act read with various Schedules:

- **Removing anomalies of inclusive definition of ‘supply’** - The definition of term “supply” starts with “supply includes” which is too wider a definition and with subjectivity, followed by inclusive definition. As this is taxable event in GST, it must be defined concretely so as to avoid any disputes & litigation, as we have seen past history for the term “manufacture” for the chargeability of central excise duty.
- **Clarifying the meaning of term ‘immovable property’ under Para 6(a) of Schedule II** - Para 6(a) of Schedule II covers work contract services as supply of services in GST. As per Section 2(119) of the CGST Act, ‘works contract’ means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some

other form) is involved in the execution of such contract. Thus, works contract in GST is restricted only in relation to immovable property.

It is suggested that meaning of term ‘immovable property’ must be clarified to avoid disputes whether particular activity is ‘works contract’ or not.

- **Retrospective effect** - Amendments in Schedule III should be made effective retrospectively from July 1, 2017 to provide clarity and avoid any legal dispute/ hardship on the tax payers for the intervening period.
- **Refund for tax already paid on transactions now included in Para 7 and 8 of Schedule III** - Relief in the form of possible refunds should be granted for the tax already paid earlier on sale of goods from custom bonded warehouse or hi-sea sales or merchant trading.
- **Inclusion of inter-company supply of services under Schedule III as no supply** - Inter-company supply of services provided by head office to branch office/ representative office of the same legal entity having a common PAN located in the taxable territory or vice versa should be included in Schedule III, so that the same does not qualify as supply of services liable to GST. Examples of such services are centralized functions of accounting, legal, HR, management carried out from the central head office for all branches, etc.
- **Inclusion of export duty credit scrips in Schedule III** - Duty credit scrips viz. MEIS/ SEIS, issued on export of goods or services are presently treated as exempted goods and therefore are subject to reversal of credit provisions of Rule 42/ Rule 43 of the CGST Rules on inputs/input services/ capital goods. As an encouragement to exporters, these duty credit scrips should be included in Schedule III as neither as supply of goods nor services.
- **Non-GST supply v. Non-taxable supply** - Form GSTR-3B has used the term Non-GST supply which is nowhere defined in GST law. GST law only discusses the term ‘non-taxable supply’ to mean a supply of goods or services or both which is not leviable to tax under GST Act [sec 2(78) of the CGST Act]. Like, supply of five specified petroleum products may be termed as non-taxable supply. Then, what constitutes non-GST supply? Whether Schedule III items are being taken as non-GST supply or are these to be considered as no supply? Whether supply of alcoholic liquor for human consumption should be considered as non-GST supply? Clarity in this regard is required. A concrete list of activities constituting non-taxable supplies in GST be provided to avoid any confusion as to its inclusion in aggregate turnover and reversal of common credit.

ICAI'S CONTRIBUTION FOR SMOOTH IMPLEMENTATION OF GST AS PARTNER IN NATION BUILDING

1. Three days training programme on GST for Department of Trade and Taxes

Indirect Taxes Committee of ICAI has launched Three (3) days training programme on GST for Department of Trade and Taxes, New Delhi for approx. 250 Assistant Commissioners and GSTO's in the batch size of 50. Following five batches of training programmes have been organised:

| S. No. | Commencement Date | Completion Date |
|--------|-------------------|-----------------|
| 1. | 17th Jan, 2019 | 19th Jan, 2019 |
| 2. | 28th Jan, 2019 | 30th Jan, 2019 |
| 3. | 31st Jan, 2019 | 2nd Feb, 2019 |
| 4. | 4th Feb, 2019 | 6th Feb, 2019 |
| 5. | 7th Feb, 2019 | 9th Feb, 2019 |

2. Live webcast on Customs and FTP

A series of live webcast on Customs and FTP have been organised by the Committee from 2nd to 9th February, 2019 which can be viewed at the YouTube channel of Committee <https://www.youtube.com/indirecttaxcommittee>

3. Suggestions on Revised Forms GSTR-9 and GSTR-9C

Committee has submitted the suggestions on the Revised Form GSTR-9 Annual Return and Form GSTR 9C Reconciliation statement & Certification notified vide Notification No. 74/2018- Central Tax dated 31st December, 2018. The suggestions have been finalized based on the inputs received from members across India who are involved in GST implementation.

4. E-publication on E-way Bill under GST

This publication has been specifically designed to provide in-depth knowledge of certain provisions pertaining to E-way bill under GST and procedural & practical aspects involved in a simplified manner along with Frequently Asked Questions and relevant case laws.

5. Background Material on GST law for commerce students

The publication aims to analyse the provisions of the law in a simple and lucid language covering all aspects of GST law such as basics of GST, important concepts, analysis, etc. so as to help the commerce students in acquiring knowledge of the new indirect tax law.

6. E-publication on Exempted Supplies under GST

Considering the importance of exemptions under GST, Indirect Taxes Committee has come up with exclusive publication namely "E-publication on Exempted Supplies under GST".

7. E-Publication on Refund under GST

Committee has published a new publication viz. "E-Publication on Refund under GST" containing analysis of the provision of GST laws relating to exports and its associated benefits. A brief of the export incentive schemes, its applicability and impact on the export has also been included in this publication.

8. BGM on Training Programme for Government Officials

Indirect Taxes Committee of ICAI has brought out a study material "Background Material on GST for Government Officials". This study material aims at providing a guidance material for the officials at the "Training Programme on GST" organised by Indirect Taxes Committee of ICAI on continuous basis.

9. E-Background Material on Customs and FTP

To provide an enhanced learning opportunity to the members and other stakeholders, the Indirect Taxes Committee of ICAI has revised "E- Background Material on Customs and FTP" and has also come up with an updated background material for the same. This Background Material has been specifically designed to provide an in-depth knowledge of provisions pertaining to Customs Law and Foreign Trade Policies in a very practical and simplified manner to the members.

10. E-publication on Supplies by/to Government under GST

Considering the nitty -gritty involved while transacting with Government, Indirect Taxes Committee 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 examples and illustrations, which Government has to deduct and deposit while making payment for supplies made to Government on account of deductee.

11. Certificate Course on GST

ICAI has launched its first batch of "Certificate Course on Goods and Services Tax (GST)" on 28th April, 2017 with a view to provide specialized and updated knowledge of GST in a systematic manner. The Committee has organised twenty-six (26) batches of Certificate Course on GST across India since February, 2018 which were attended by 1227 members. Further, fifty-nine (59) batches were organised till January, 2018 where in 3595 members have been trained.

PUBLICATIONS

The Indirect Taxes Committee of ICAI keeps the members updated by providing timely guidance in the form of its updated/revised publications which members may subscribe. The Committee has recently launched/revised the publication:

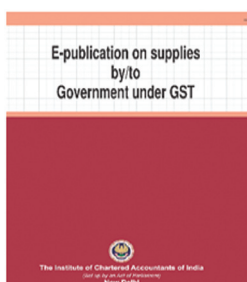


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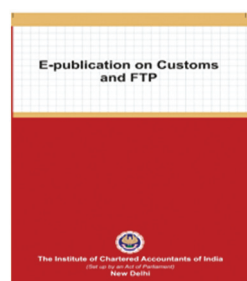
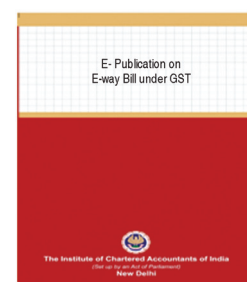


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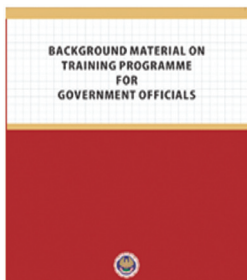
E- Publication on E-way Bill under GST

Considering the importance of e-way bill and the procedure involved, the Indirect Taxes Committee of ICAI has revised “E- publication on E-way Bill under GST”. This publication has been specifically designed to provide in-depth knowledge of certain provisions pertaining to E-way bill under GST and procedural & practical aspects involved in a simplified manner along with PPT, FAQs and case laws describing the meaning, need, when, where, how, forbearance, issues, intricacies, practical challenges, some solutions, modes etc. of e-way bill.



E-Publication on Customs and FTP

Considering paramount importance of Customs and Foreign Trade Policy for economic growth and impact of GST on it, Indirect Taxes Committee has revised “e-Background Material on Customs and FTP”. This material is designed to provide in depth practical and theoretical knowledge about levy and types of Custom duties, the taxable event, import /export procedure, provisions in respect of warehousing, duty drawback of Customs duty, the baggage rules, impact of GST on various FTP provisions including schemes etc.

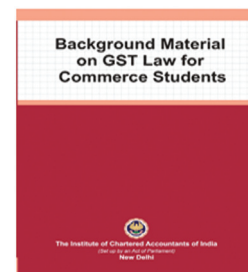


Background Material on GST for Government Officials

“Background Material on GST for Government Officials” aims at providing a guidance material for the officials at the “Training Programme on GST” organised by Indirect Taxes Committee of ICAI on continuous basis. This covers a large number of relevant topics which would prove to be a value addition to Department Officials and enable them to understand the accounting and auditing aspects involved in the GST which will, in turn, help them in verifying the tax credits, exemptions, abatement etc. as per the requirements of the law.

Background Material on GST Law for Commerce Students

With the aim to provide students with a working knowledge of principles and provisions of GST law, ICAI has come up with this publication on “Background Material on GST Law for Commerce Students” which explains GST law in a simple and lucid language.



Ordering Information

The Publications (other than E-Publications) can be purchased directly from the sales counter at the ICAI’s Regional Offices / Branches or at the Head Office. Member may also download it from the website of Indirect Taxes Committee <http://idtc.icai.org/publications.php>. To order online, requisition may be made at <https://icai-cds.org/>



Certificate Course on GST at Delhi



Certificate Course on GST at Jaipur



Training Program on GST for GST officials at Delhi



Certificate Course on GST at Bellary