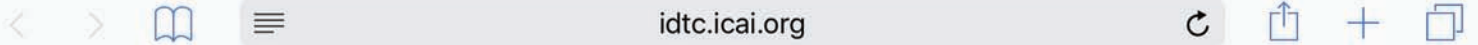




ICAI-GST

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



Indirect Taxes Committee
The Institute of Chartered Accountants of India
(Setup by an Act of Parliament)

Contact us +91 120 3045954
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Upcoming Events

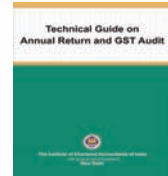
4th Assessment Test of Certificate course on GST to be held on 20th January 2109
Starting From: 20-01-2019
Venue: As per selected centres mentioned in Announcement
Duration: 2 hours
Contact Person: CA. JAIN RITIKA, 01203045954, ritika.jain@icai.in

About the Committee

The Indirect Taxes Committee is one of the most important non-standing Committees of the ICAI. The main function of the Committee is to examine the indirect taxes laws, rules, regulations, circulars, notifications etc., which may be enacted or issued by the Government from time to time and to send suitable memoranda containing suggestions for improvements in the respective legislation. The Indirect Taxes Committee actively facilitates the process of formulation of budget by offering pre-budget and post-budget suggestions/comments to simplify tax laws and their administration for the purpose of making it more responsive to tax payers..

Another important function of the Committee is to enhance the awareness/ knowledge of...

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- Highlights of Indirect Taxes Proposals-Union Budget 2017-18
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- Important activities undertaken during year - A

Announcements

- Mock Test Paper of 4th Assessment Test **NEW**
- Announcement of the 4th Assessment Test 20th Jan, 2019 **NEW**
- E-Newsletter on GST- 21st Edition **NEW**
- List of Passed Participants for 3rd Assessment Test of Certificate Course on VAT held on 5th October 2018 **NEW**
- ICAI submitted suggestions on GST Annual Return Form – 26th Sep, 2018

Audits and Certification under GST by CA. Madhukar Hiregange , Chairman IDTC



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CONTENTS

➤ Update

1. GST updates 4-6
2. Customs 17

➤ Articles

1. Determination and apportionment of input tax credit in respect of capital goods 7-14
 2. Effect of retention of Article 366 (29A) in the Constitution after GST 15-17
 3. Structure of GSTIN 23
- FAQ's on Form GSTR-9 – Annual Return 18-22



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President's Communication



My Esteemed professional colleagues,

Under GST laws, every registered person whose turnover exceeds the prescribed limit of Rs.2 crore have to get his accounts audited and submit report under section 35(5) of the CGST Act 2017. Such person is required to submit a copy of the audited annual accounts and the reconciliation statement under section 44(2) of the CGST Act 2017.

The online utilities for GST Portal for filing of GST Annual Return in Form GSTR-9 (normal dealers)/ GSTR-9A (composition dealers) and GST Audit Report in Form GSTR-9C are under preparation and not expected to be ready before the prescribed due date under the law. Under the circumstances the due date for filing of Forms GSTR-9, 9A and 9C has to be suitably extended. The issue was also highlighted by ICAI with a request for extension of the due date of filing of said forms upto 31st March, 2019 or further. Also, Government has extended the due date of furnishing return in Form GSTR-7 for the months of October, 2018 to December, 2018 to 31st January, 2019. We hope this will allow assessee to comply with law without any undue pressure on them.

ICAI on its part is proactively supporting the Government's initiatives and has submitted detailed suggestions on "Form GSTR-9C- Reconciliation Statement". A follow up representation for permitting availment of input tax credit under GST pertaining to Financial Year 2017-18 till 31st December, 2018 or further is also submitted.

In our continuous drive of knowledge dissemination, the Indirect Taxes Committee of the ICAI has come up with an updated series of E-learning on GST through recorded video sessions covering comprehensively important topics of GST including GST Annual Return & Audit. Further, to support easy learning and as per suggestions received, short videos on various concepts of GST covering meaning of supply, place of supply, time of supply, valuation, export etc. have been recorded and hosted.

The website www.idtc.icai.org also carries 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.

Let's participate with renewed zeal, innovative ideas and continue to be enabling partner in transformative implementation exercise of GST law in our country and UAE.

With Best Wishes,

CA. Naveen N. D. Gupta
President, ICAI



GST UPDATES

Extension of due date for filing FORM GSTR-9, FORM GSTR-9A and FORM GSTR-9C

The competent authority has decided to extend the Due Date for filing FORM GSTR-9, FORM GSTR-9A and FORM GSTR-9C till 31st March, 2019. The requisite FORMs shall be made available on the GST common portal shortly. Relevant Order is being issued.

Earlier, FORM GSTR-9 and FORM GSTR-9A were notified vide Notification No. 39/2018-Central Tax, dated 04.09.2018 while FORM GSTR-9C was notified vide Notification no. 49/2018-Central Tax, dated 13.09.2018 as part of the CGST Rules.

[PIB Release ID 186223 dated 11th December, 2018]

Effective tax rate on complex, building, flat etc.

It is brought to the notice of buyers of constructed property that there is no GST on sale of complex/building and ready to move-in flats where sale takes place after issue of completion certificate by the competent authority. GST is applicable on sale of under construction property or ready to move-in flats where completion certificate has not been issued at the time of sale.

Effective rate of tax and credit available to the builders for payment of tax are summarized in the table for pre-GST and GST regime.

Period	Output Tax Rate	Input Tax Credit details		Effective Rate of Tax
Pre- GST	Service Tax: 4.5% VAT: 1% to 5% (composition scheme)	Central Excise on most of the construction materials: 12.5% VAT: 12.5 to 14.5% Entry Tax: Yes	No input tax credit (ITC) of VAT and Central Excise duty paid on inputs was available to the builder for payment of output tax, hence it got embedded in the value of properties. Considering that goods constitute approximately 45% of the value, embedded ITC was approximately 10-12%.	Effective pre-GST tax incidence: 15- 18%
GST	Affordable housing segment: 8%, Other segment: 12% after 1/3rd abatement of value of land	Major construction materials, capital goods and input services used for construction of flats, houses, etc. attract GST of 18% or more.	ITC available and weighted average of ITC incidence is approximately 8 to 10%.	Effective GST incidence, for affordable segment and for other segment has not increased as compared to pre- GST regime.

Housing projects in the affordable segment such as Jawaharlal Nehru National Urban Renewal Mission, Rajiv Awas Yojana, Pradhan Mantri Awas Yojana or any other housing scheme of State Government etc., attract GST of 8%. For such projects, after offsetting input tax credit, the builder or developer in most cases will not be required to pay GST in cash as the builder would have enough ITC in his books of account to pay the output GST.

For projects other than affordable segment, it is expected that the cost of the complex/ buildings/ flats would not have gone up due to implementation of GST. Builders are also required to pass on the benefits of lower tax burden to the buyers of property by way of reduced prices/ installments, where effective tax rate has been down.

[PIB Release ID 186209 dated 8th December, 2018]

Terms and Conditions: Use of GST Portal

This User Agreement shall apply to all the Users of GST Portal.

Permitted use

GST Portal shall not in any manner be used for any unauthorized activity (ies). The GST Portal shall be used only for purposes as authorised by GST Law/GST portal policy.

Confidential Information and personally identifiable information of any taxpayer shall not be disclosed. For any unauthorised disclosure which is not attributable to GSTN, GSTN shall not be held responsible.

While using the GST Portal the user shall comply with all applicable laws, provide up to date, and correct and accurate information as may be required. The Services provided on the GST Portal shall be accessed only through the interfaces expressly authorised by GSTN or on the GST Portal.

Without limitation of the above, the Users of GST Portal shall not:-

- I. Imply or state any affiliation with or endorsement of GSTN / without direct and express consent of such organisation (e.g., representing oneself as an accredited GSTN associate).
- II. Manipulating identifiers in order to disguise the origin of any message or post transmitted through the GST portal.

- III. Monitoring the GST portal's availability, performance or functionality for any competitive purposes.
- IV. Overlaying or otherwise modifying the GST portal or their appearance.
- V. Removing or covering or obscuring any advertisement included on the GST portal.
- VI. Renting, leasing, loaning, trading, selling/re-selling access to the GST portal or related data of GST portal.
- VII. Selling, sponsoring, or otherwise monetizing any GST portal Service or feature without GSTN's direct and express consent.
- VIII. Soliciting or collecting email addresses or other personal information of GST portal users or GSTN users in any manner.
- IX. Using, disclosing or distributing any data obtained in violation of this policy.

This User Agreement shall be governed by and construed in accordance with the Indian Laws. Any contravention of this User Agreement shall be viewed strictly and appropriate Criminal/Civil action will be initiated in accordance with the applicable laws.

GSTN exclusively reserves the rights, to change or modify or alter this User Agreement (whether completely or partially), from time to time, at its discretion, without any objections, interruptions, grounds, claims or liabilities of any third party/users.

By accessing GST Portal it is deemed that you have given your consent to this User Agreement and shall be bound by the terms of this User Agreement.

Unauthorized activities: The term Unauthorised activities includes any activity which is punishable under section 43 (for eg web scraping, altering source code, hacking, introducing viruses etc.) and Section 45 of the Information Technology Act, 2000 (here in after IT Act) or which have been defined as offence under Chapter XI of The IT Act and/or any other activity which is prohibited under any Act, rules, regulations having force of law in India and/or any activity which contravenes access controls/Service use limits set by GSTN on the GST Portal and/or any security feature developed by GSTN on the GST Portal and/or any activity which is contrary to any other policies of the GST Portal.

[GST Portal dated 5th December, 2018]

Examination for Confirmation of Enrollment of GST Practitioners

Reference is invited to Press Releases dated 1.11.2018 and 29.11.2018 regarding exam to be conducted on 17.12.2018 for GST Practitioners (GSTPs) covered under clause (b) of sub-rule (1) of Rule 83 of CGST Rules 2017, i.e. those enrolled as a sales

tax practitioners or tax return preparer under the existing law for a period not less than five years, and enrolled under sub-rule (2) of Rule 83 of the said Rules. For the said examination, candidates enrolled up-to 4.12.2018 (11.59.59 PM) will be eligible to register, instead of 26.11.2018, notified earlier. The registration window will also remain open till 7.12.18 (11.59.59PM), instead of 5.12.18 (11.59.59PM) notified earlier.

Further, if there are any candidates who get enrolled from 5.12.18 to 16.12.18 in the relevant category, they will also be allowed to register and appear in examination on provisional basis. Such candidates will have to make a request to NACIN for provisional registration at email gstp.nacin@gmail.com. Such candidates will be required to appear at the test centres as allotted by NACIN. The registration fee paid by such candidates shall be non-refundable, irrespective of their eligibility.

[PIB Release ID: 186116 dated 4th December, 2018]

Status of GST Refunds

Total GST refunds to the tune of Rs 91,149 crores have been disposed by CBIC and State authorities out of the total refund claims of Rs 97,202 crores received so far. Thus, the disposal rate of 93.77 per cent has been achieved. The pending GST refund claims amounting to Rs 6,053 crores are being expeditiously processed so as to provide relief to eligible claimants. Refund claims without any deficiency are being cleared expeditiously.

In case of IGST refunds, about 95% (Rs 48,455 crores) of the total IGST refund claims (Rs. 50,928 crore) transmitted to Customs from GSTN as on 28.11.2018 have already been disposed. The remaining claims amounting to Rs. 2,473 crores are held up on account of various deficiencies which have been communicated to exporters for remedial action.

In the case of RFD-01A (ITC Refunds plus other refunds) claims, out of the total refund claims of Rs. 46,274 crores received in the jurisdictional tax offices, the pendency as on 03.12.2018 is Rs. 902 crores with Centre and Rs 2,678 crore with States. Provisional/final order has been issued in case of refunds amounting to Rs. 37,406 crores. In claims amounting to Rs. 5,288 crore, deficiency memos have been issued by respective GST authorities and action will be taken after receipt of replies from the claimants.

Efforts are being made continuously to clear all the pending refund claims, where ever requisite information is provided and found eligible. Co-operation of the exporter community is solicited to ensure that they respond to the deficiency memos and errors communicated by Centre and State GST as well as Customs Authorities and also exercise due diligence while filing GSTR 1 and GSTR 3B returns as well as Shipping Bills.

[PIB Release ID: 186090 dated 3rd December, 2018]

GST Revenue collection for the month of November 2018 crosses Ninety-Seven Thousand Crore Rupees

The total gross GST revenue collected in the month of November,

2018 is Rs. 97,637 crore Segregation of which is given below:

Tax	Amount
CGST	Rs. 16,812 crore
SGST	Rs. 23,070 crore
IGST	Rs. 49,726 crore
Cess	Rs. 8,031 crore

The total number of GSTR 3B Returns filed for the month of October up to 30th November, 2018 is 69.6 lakh.

(Release ID: 186059 dated 1st December, 2018)

Due date of filing of GSTR-7 extended to 31st January, 2019

The Central Government vide Notification No. 66 /2018 – Central Tax dated 29th November, 2018 has notified that the due date of furnishing return in FORM GSTR-7 (Form for furnishing return by registered persons who are required to deduct tax at source under the provisions of section 51) for the months of October, 2018 to December, 2018 has been extended to the 31st January, 2019.

Comments: It may be noted that extension of GSTR-7 would also extend the due date of payment of TDS as both of them are interrelated. Deductee will need to file monthly returns without the benefit of TDS and this might cause some concerns.

[Notification No. 66 /2018 – Central Tax dated 29th November, 2018]

Due date of filing of GSTR 3B/GSTR 1 for the month of July and August, 2018 extended for registered persons in Kerala, Kodagu (Karnataka); Mahe (Pondicherry)

The Central Government vide Notification No. 62 /2018-CT; Notification No. 63 /2018-CT; Notification No. 64 /2018-CT/ Notification No. 65 /2018-CT dated 29th November, 2018 has notified that the return in FORM GSTR-3B/ GSTR 1 for the following registered persons has been extended upto the dates given below:

Whose principal place of business	Form	Due Date
Is in Cuddalore, Thiruvarur, Pudukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram in the State of Tamil Nadu	FORM GSTR-3B/ GSTR 1 for the month of October, 2018	20th December, 2018

[Notification No. 62/2018-CT; Notification No. 63/2018-CT; Notification No. 64/2018-CT/ Notification No. 65/2018-CT dated 29th November, 2018]

Examination for Confirmation of Enrollment of GST Practitioners Postponed to 17.12.2018

Earlier Press Release dated 1.11.2018; exam for GST Practitioners was scheduled to be held on 7.12.2018. However, on account of Assembly Elections in some of the States on 7.12.2018, the date of the examination stands revised to 17.12.2018 (17th December 2018).

[PIB Release ID: 185828 dated 19th November, 2018]

Enhancements in E-Way Bill System w.e.f 16.11.2018

- Checking of duplicate generation of e-way bills based on same invoice number:** The e-way bill system is enabled in a way that if the consignor has generated one e-way bill on the particular invoice, then he or consignee or transporter will not be allowed to generate one more e-way bill on the same invoice number. For eg: If the transporter or consignee has generated one e-way bill on the consignor's invoice, then if any other party (consignor, transporter or consignee) tries to generate the e-way bill, the system will alert that there is already one e-way bill for that invoice, and further it allows him to continue, if he wants.
- CKD/SKD/Lots for movement of Export/Import consignment:** CKD/SKD/Lots supply type can now be used for movement of the big consignment in batches, during Import & Export also. Delivery challan and tax invoice need to accompany goods as prescribed in Rule 55 (5) of CGST Rules, 2017.
CKD/SKD: Completely knocked down/ semi knocked down.
- Shipping address in case of export supply type :** For Export supply type, the 'Bill To' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and shipping address and PIN code can be given as the location (airport/shipping yard/border check post/ address of SEZ), from where the consignment is moving out from the country.
- Dispatching address in case of import supply type :** For Import supply, the 'Bill From' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and dispatching address and PIN code can be given as the location (airport/shipping yard/border check post/ address of SEZ), from where the consignment is entering the country.
- Enhancement in 'Bill to – Ship To' transactions:** EWB generation is now categorized to four types now Regular and Bill to Ship to, Bill from Dispatch from & combination of both.
- Changes in Bulk Generation Tool:** Facility of EWB generation through the Bulk Generation Tool has been enhanced.

For more information visit <https://docs.ewaybillgst.gov.in/Documents/Enhancementsewb16nov.pdf>

[GST Portal dated 12th November, 2018]



DETERMINATION AND APPORTIONMENT OF INPUT TAX CREDIT IN RESPECT OF CAPITAL GOODS

(Critical analysis of Rule 43 of Central Goods and Services Tax Rules, 2017)

Input tax credit ('the ITC') is the backbone of GST. On a perusal of sections 73 and 74 will reveal that wrong availment of ITC is being treated as violation, irrespective of its actual utilization. In this article, Rule 43 of CGST Rules, 2017 ('the Rules') has been thoroughly discussed and critically analyzed so as to enable every reader to use this article as a ready reference. Rule 43 talks about ITC in respect of capital goods, so reference to any section in this article has been modified accordingly to concentrate on capital goods only. There are certain errors in drafting of Rule 43, which we see with the flow of discussion.

Issues to be analyzed

- I. Emergence of Rule 43 and principles embedded therein
- II. Express assumption taken by Rule 43 – does it hold goods in all situations?
- III. Contradiction between Rule 43 and GSTR-3B
- IV. Understanding Rule 43 – an easy digest of a complex drafting!
- V. Situations not specifically covered by law

All above issues has been analyzed in this article at length at relevant places in the form of discussion.

I. Emergence of Rule 43 and principles embedded therein

Section 17(1) and section 17(2) are cause of creation of Rule 43. Section 17(1) specifies that ITC in respect of capital goods shall not be available to the extent these are used for non-business purposes. Similarly, section 17(2) specifies that ITC in respect of capital goods shall not be available to the extent these are used for effecting exempt outward supplies.

So, Rule 43 is based on following principles –

- i. If inward supply of capital goods is used for effecting taxable outward supplies, then ITC shall be available in respect of such goods to the extent these are used for said purpose.
- ii. If inward supply of capital goods is used for effecting zero rated outward supply, then ITC shall be available in respect of such goods to the extent these are used for said purpose.
- iii. If inward supply of capital goods is used for effecting exempt outward supplies, then ITC shall not be available in

respect of such goods to the extent these are used for said purpose.

- iv. If inward supply of capital goods is used for non-business purpose, then ITC shall not be available in respect of capital goods to the extent these are used for said purpose.

ITC in respect of those capital goods shall also not be available, when such goods falls within the scope of section 17(5).

II. An express assumption taken by Rule 43 (for commonly used capital goods)

A capital good has a life of 5 years i.e. 60 months i.e. 20 quarters. So, ITC in respect of a capital goods shall be available over a period of 5years/60months/20 quarters. Rule 43 specifically uses 5% per quarter.

An implied intention of Rule 43

When we compare Rule 43 with Rule 42, there is no provision for annual recalculation in Rule 43 as in Rule 42. So, Rule 43 has been drafted in such a manner that calculation of credit for a particular tax period (month) must be accurate and final in that period itself.

In other words, as soon as a tax period (i.e. month) ends, self-assessment of 1/60th of the credit also must end. No one needs revisit this 1/60th part in next tax period(s). Similarly, one can conclude that as soon a quarter ends, self-assessment of 5% for that quarter also ends. Rule 43 treats part of quarter as complete quarter for purpose of this computation exercise.

Some other aspects relevant for understanding Rule 43

One can take credit in respect of a capital goods as soon as four conditions as specified in section 16(2) are fulfilled, if not, credit is ineligible.

Let us analyze above concepts

Situation-1 Suppose certain capital goods were purchased and delivered on 20.07.2017 along with invoice of even date. IGST charged on invoice was Rs. 6,60,000. Till December 2017, it was being used exclusively for effecting exempt supplies. But, from January 2018 to June 2018, it was used commonly for effecting taxable supplies, exempt supplies and non-business purposes. After July 2018, it was used exclusively for effecting taxable supplies.

Turnover	January 2018	February 2018	March 2018	April 2018	May 2018	June 2018
Exempt	4 crores	5 crores	2.5 crores	4 crores	2 crores	3.5 crores
Non-business	1 lakh	1 lakh	1 lakh	1 lakh	1 lakh	1 lakh
Total	10 crores	15 crores	10 crores	20 crores	11 crores	12.25 crores

Since the capital goods were being used for effecting exempt supplies upto December 2017, ITC would have not been availed.

Monthly proportionate ITC = Total ITC ÷ 60 = 6,60,000 ÷ 60 = 11,000

ITC finalized upto December 2017 = monthly proportionate ITC × number of months lapsed
= 11,000 × (months from July 2017 to December 2017)
= 11,000 × 6 = 66,000

So, out of Rs. 6,60,000, self-assessment of ITC of Rs. 66,000 has become final. In other words, since the capital goods were used from July 2017 to December 2017 (i.e. for 2 quarters) for effecting exempt supplies, proportionate amount of ITC i.e. Rs. 66,000 will stand disallowed. And the remainder of the available credit is fully available, for now.

Note: definition of quarter may have different impact in different situations (we will discuss this later in this article)

Now, we will consider treatment of remaining amount of ITC of Rs. 5,94,000 i.e. 6,60,000-66,000.

For the month of January 2018, capital goods were used for common purposes. (Assuming requirement of section 16(3) is taken care; as entire Rule 43 itself is subject to section 16(3))

For this purpose, proviso to Rule 43(1)(c) read with Rule 43(1)(d) specifies that ITC in respect of commonly used capital goods (i.e. common credit) denoted by "A" [or $\Sigma A = T_c$] shall be calculated as under –

Input tax on such capital goods	6,60,000
Less: 5% for every quarter from date of invoice	66,000
(i.e., 6,60,000 × 5% × 2)	
$T_c = \Sigma A$	5,94,000

Logically, if we exclude the proportionate exempt or non-business part from this Rs. 5,94,000, balance credit should be granted to the registered taxable person.

When we move further, we seem to come upon an anomaly in Rule 43. Let's see this –

As per Rule 43(1)(e), proportionate monthly common credit (denoted by T_m ; $T_m = T_c / 60$) on such goods shall be Rs. 9,900 i.e. 5,94,000/60 but it should logically have been Rs. 11,000 i.e., 6,60,000/60. However, treatment flowing from the Rule is beneficial to taxpayer as can be seen below:

Proportionate exempt part i.e. common credit attributable towards exempt supplies denoted by T_e shall be calculated as under –

$$T_e = (E \div F) \times T_c$$

as specified in Rules	as it appears logical
$T_e = (4 \div 10) \times 9900 = 3,960$	$T_e = (4 \div 10) \times 11,000 = 4,400$

Where $T_r = \Sigma T_m$

E = Exempt turnover for the tax period i.e. for January 2018 in our example

F = Total turnover for the tax period i.e. for January 2018 in our example

Calculation of ITC in respect of said capital goods for January 2018

Particulars	Remark / calculation	Amount (as specified in Rules)	Amount (logically)
Amount to be credited in electronic credit ledger (i)	T_c	5,94,000	5,94,000
**Amount to be added in output tax liability (ii)	T_e	3,960	4,400

****Rule 43(1)(h)** specifies that it shall be added to output tax liability along with applicable interest for the duration for which this amount has been availed and held in credit. However, it is important to note that no interest may be levied on this amount in case ITC is lying unutilized.

Another aspect to note here is that Rule 43 appears to be silent on proportionate credit relating to non-business use, that is, credit attributable towards non-business use of underlying capital goods. Although such provision is notionally arrived through clause (j) for purpose of Rule 42, section 17(1) specifies that where capital goods are used for non-business purpose then ITC shall not be available to that extent. Since, the provisions of the Act ought to prevail, it appears prudent to include non-business turnover while calculating exempt turnover for the tax period i.e. January 2018 in our example. In this way, proportionate amount of credit attributable to non-business purposes would also stand reverse. Non-business turnover can be determined by applying valuation Rules.

Calculation of ITC in respect of said commonly used capital goods from February 2018 to June 2018

Particulars	Remark / calculation	February 2018	March 2018	April 2018	May 2018	June 2018
Tr (Rs.)	As per Rules	9,900	9,900	9,900	9,900	9,900
+E (Rs.)	As per Rules	5 crores	2.5 crores	4 crores	2 crores	3.5 crores
F (Rs.)	As per Rules	15 crores	10 crores	20 crores	11 crores	12.25 crores
ITC to be taken		Nil	Nil	Nil	Nil	Nil
*Amount to be added in output tax liability	Te= (E÷F) × Tr (as per Rules)	3,300	2,475	1,980	1,800	2,828.57
# Interest to be added	As per Rules on amount added above	From Jan-18 to Feb-18	From Jan-18 to Mar-18	From Jan-18 to April-18	From Jan-18 to May-18	From Jan-18 to Jun-18

+ as suggested, exempt turnover needs to include non-business value also, however for ease of calculation, the same hasn't been considered.

§ No need, because Rs. 5,94,000 has already been credited in electronic credit ledger in month of January 2018

*logically this amount should have been calculated based on Tr being Rs. 11,000 in place of 9900 which is as per Rules.

#as ITC of Rs. 5,94,000 was taken in January 2018.

Some realignment required in Rule 43 and its and presentation in GSTR-3B- January 2018

4. Eligible ITC

Details	Integrated Tax	Central Tax	State/ UT Tax	Cess
1	2	3	4	5
(A) ITC Available (whether in full or part)	5,94,000			
(1) Import of goods				
(2) Import of Services				
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)				
(4) Inward supplies from ISD				
(5) All other ITC				
(B) ITC Reversed	3,960			
(1) As per rules 42 & 43 of CGST Rules				
(2) Others				
(C) Net ITC Available (A) - (B)	5,90,040			
(D) Ineligible ITC				
(1) As per section 17(5)				
(2) Others				

From here, it can be clearly seen that even if Rules intend to add the amount in output tax liability but while implementing the law, amount is being reversed from ITC.

Now, we can proceed to examine the situation in July 2018.

From July 2018 and onwards, said goods was used for taxable purpose, hence no separate treatment is required because ITC in respect of said goods has already been availed and for this reason, Rule 43 does not specify any treatment.

Situation 2: when capital goods used exclusively for effecting taxable supplies are subsequently used for common purpose

Similarly, for such cases, proviso to Rule 43(1)(d) has specified that in such case common credit (Tc) shall be calculated as under –

Input tax on such capital goods	-
Less: 5% for every quarter lapsed from date of invoice	-
TC = ΣA	-

However, there is no need to take here again, because ITC would have been taken on fulfilment of conditions of section 16(2) of the Act.

Remaining procedure is exactly the same as discussed in situation-1.

Impact of definition of quarter

Definition of “quarter” as given in section 2(92) of the Act is equally important because as per definition, quarter is not a period of three months from one date to another date but is a period of three months being April to June, July to September, October to December and January to March between one date to another date.

If we find out number of quarters from 27.09.2017 to 04.07.2018, then number of quarters as per definition shall be 5 quarters as under –

- 27.09.2017 to 30.09.2017
- 01.10.2017 to 31.12.2017
- 01.01.2018 to 31.03.2018
- 01.04.2018 to 30.06.2018
- 01.07.2018 to 04.07.2018

III. Understanding drafting (provisions) of Rule 43 with a case study

Assumption: GST law was implemented from 01.04.2010. this assumption has been taken so that reader could imagine the real picture of Rule 43.

For better understanding, take example of October 2018. Please consider the following data to analyze drafting of Rule 43:

Capital Goods	Date of invoice	Period of use relevant purpose		IGST charged on invoice (Rs.)
		Period	Use during that period	
CG1	14.09.2010	From date of invoice	For effecting taxable supplies	7, 20, 000
CG2	03.06.2011	From date of invoice to January 2018	For effecting taxable supplies	4, 80, 000
		thereafter	For effecting exempt supplies	
CG3	17.07.2015	From date of invoice to April 2018	For effecting exempt supplies	6, 00, 000
		thereafter	For common purpose	
CG4	19.08.2016	From date of invoice to February 2017	For effecting taxable supplies	4, 20, 000
		thereafter	For common purpose	
CG5	20.09.2016	From date of invoice to September 2018	For effecting exempt supplies	6, 60, 000
		thereafter	For common purpose	
CG6	07.12.2016	From date of invoice to September 2018	For effecting taxable supplies	2, 00, 000
		thereafter	For common purpose	
CG7	20.08.2017	From date of invoice	For common purpose	6, 00, 000
CG8	05.05.2018	From date of invoice	For common purpose	3, 24, 000
CG9	07.10.2018	From date of invoice	For effecting taxable supplies	1, 92, 000
CG10	16.10.2018	From date of invoice	For effecting exempt supplies	1, 96, 000
CG11	22.10.2018	From date of invoice	For common purpose	2, 40, 000

Use for common purpose includes use of capital goods for effecting taxable supplies and exempt supplies. Taxable supplies include zero rated supplies

Turnover Type	Amount (Rs.) (For October 2018)
Exempt	4 crores
Total	10 crores

Now, while preparing returns for October 2018 and onwards.

CG1, CG2

5 years have been lapsed from date of invoice, So, these are not relevant.

Capital goods which are exclusively being used for particular purpose during October 2018

Capital Goods	Date of invoice	Period of use relevant purpose		IGST charged on invoice (Rs.)	ITC to be taken in October 2018	Remarks
		Period	Use during that period			
CG9	07.10.2018	From date of invoice	For effecting taxable supplies	1, 92, 000	1, 92, 000	See rule 43(1)(b)
CG10	16.10.2018	From date of invoice	For effecting exempt supplies	1, 96, 000	Nil	See rule 43(1)(a)

Capital goods which are being used for common purpose for the first time in October 2018

C/G	Date of invoice	Period of use relevant purpose		IGST charged on invoice (Rs.)	Quarters lapsed from date of invoice to the date when goods used for common purpose	Calculation of common credit for October 2018	Amount of common credit for October 2018 [A]	Remarks
		Period	Use during that period					

CG5	20.09.2016	From date of invoice to September 2018	For effecting taxable supplies	6, 60, 000	9 quarters (from 20.09.2016 to 30.09.2018)	(6,60,000-6,60,000*5%*9)	3,63,000	ITC of 3,63,000 shall be credited to electronic credit ledger in October 2018 [see proviso to rule 43(1)(c)]
		Thereafter	For common purpose					
CG6	07.12.2016	From date of invoice to September 2018	For effecting taxable supplies	2, 00, 000	8 quarters	(2,00,000-2,00,000*5%*8)	1,20,000	ITC of Rs. 1, 20,000 shall not be credited to electronic credit ledger in October 2018 because Rs. 2,00,000 would have been credited in December 2016 as per rule 43(1)(b)
		Thereafter	For common purpose					
CG11	22.10.2018	From date of invoice	For common purpose	2, 40, 000		See rule 43(1)(c)	2,40,000	ITC of 2,40,000 shall be credited to electronic credit ledger
Common credit in respect of capital goods during useful life of 5 years [Tc] = $\sum A$							7, 23,000	See rule 43(1)(d) and it's proviso
One- month proportionate common credit						[Tm] = Tc/ 60	12,050	See rule 43(1)(e)

Other capital goods which are being used for common purpose in October 2018

CG4: Tc in respect of CG4 would have been calculated in March 2017 as under

C/G	Date of invoice	Period of use relevant purpose		IGST charged on invoice (Rs.)	Quarters lapsed from date of invoice to the date when goods used for common purpose	Calculation of common credit for March 2018	Amount of common credit for March 2017 [A] $\sum A = Tc$	Remarks for October 2018
		Period	Use during that period					
CG4	19.08.2016	From the date of invoice to February 2017	For effecting taxable supplies	4, 20, 000	3 quarters (from 19.08.2016 to 28.02.2017)	(4,20,000-4,20,000*5%*3)	3,57,000	ITC of 3,57,000 not to be credited in credit ledger in October 2018 because 4, 20,000 would have been taken (credited) in August 2016 as per rule 43(1)(b)
		Thereafter	For common purpose					
Common credit in respect of capital goods CG4 during useful life of 5 years [Tc] = $\sum A$							3, 57,000	See rule 43(1)(d) and it's proviso
One- month proportionate common credit						[Tm] = Tc/ 60	12,050	See rule 43(1)(e)

CG7: Tc in respect of CG7 would have been calculated in August 2017 as under

C/G	Date of invoice	Period of use relevant purpose		IGST charged on invoice (Rs.)	Quarters lapsed from date of invoice to the date when goods used for common purpose	Calculation of common credit for August 2017	Amount of common credit for August 2017 [A] $\Sigma A = Tc$	Remarks for October 2018
		Period	Use during that period					
CG7	20.08.2017	From the date of invoice	For common purpose	6,00,000			6,00,000	ITC of 6,00,000 shall not to be credited in credit ledger in October 2018 because it would have been taken (credited) in August 2017 as per rule 43(1)(c)
Common credit in respect of capital goods CG7 during useful life of 5 years [Tc] = ΣA							6,00,000	See rule 43(1)(d) and it's proviso
One- month proportionate common credit						$[Tm] = Tc / 60$	10,000	See rule 43(1)(e)

CG3and CG8: Tc in respect of CG3and CG8would have been calculated in May 2018 as under

C/G	Date of invoice	Period of use relevant purpose		IGST charged on invoice (Rs.)	Quarters lapsed from date of invoice to the date when goods used for common purpose	Calculation of common credit for May 2018	Amount of common credit for March 2018 [A] $\Sigma A = Tc$	Remarks for October 2018
		Period	Use during that period					
CG ₃	17.07.2015	From the date of invoice to April 2018	For effecting exempt supplies	6,00,000	12 quarters (from 17.07.2015 to 30.04.2018)	(6,60,000-6,60,000*5%*12) [see proviso to Rule 43(1)(c)]	2,40,000	ITC of 2,40,000 shall not to be credited in electronic credit ledger in October 2018 because it would have been taken (credited) in May 2018 as per proviso to rule 43(1)(c)
		thereafter	For common purpose					
CG8	05.05.2018	From the date of invoice	For common purpose	3,24,000			3,24,000	ITC of 3,24,000 shall not be credited in electronic credit ledger in October 2018 because it would have been credited in May 2018 as per rule 43(1)(c)
Common credit in respect of capital goods CG3& CG8 during useful life of 5 years							5,64,000	See rule 43(1)(d) and it's proviso
One- month proportionate common credit						$[Tm] = Tc / 60$	9,400	See rule 43(1)(e)

Amount of ITC on all capital goods whose useful life remains during October 2018 [Tr] shall be calculated as under [see Rule 43(1)(f)]-

$$\begin{aligned} Tr &= \Sigma Tm \\ &= 12,050+5,950+10,000+9,400 \\ &= 37,400 \end{aligned}$$

Amount of credit attributable towards exempted supplies for October 2018 [Te] shall be calculated as under –

$$\begin{aligned} \text{Te} &= (E \div F) \times \text{Tr} \\ &= (4 \div 10) \times 37,400 \\ &= 14,960/- \end{aligned}$$

Where –
E = Exempt turnover for the tax period i.e. October 2018 in our example
F = Total turnover for the tax period i.e. October 2018 in our example

Conclusion of determination and apportionment of ITC for October 2018 (As per Rule 43)	
Amount to be credited in electronic credit ledger (i.e. ITC to be taken) in respect of –	7,95,000
CG9 : 1,92,000	
CG5 : 3,63,000	
CG11 : 2,40,000	
Teto be added to output tax liability as per Rules (but to be shown as reversal in GSTR-3B)	14,960

IV. Situations not specifically covered by law

When capital goods being used for common purpose are subsequently used exclusively for effecting exempt supplies

Issue is not fully addressed in the law. Wherever, taxpayer subsequently deals entirely with exempt supplies, then it is covered by section 18(1)(d) read with Rule 44. While other case where he continues to deal with taxable supplies also, but the said capital goods becomes exclusively used for effecting exempted supplies, then there is no specific provision.

Suppose a capital good was received on 22.09.2017 along with invoice of even date. IGST charged on invoice was Rs. 1,20,000. Since the date of its receipt, it was being used for common purposes but from 01.10.2018, it is being used exclusively for effecting exempt supplies. Undoubtedly, ITC has to be reversed in month of October 2018.

Here, it is important to mention that Rule 43(1)(c) specifies that useful life of commonly used goods shall be taken to be 5 years.

But in the absence of any specific provisions for treatment of ITC in such cases, following questions arises –

- Whether ITC to be reversed shall be reduced by 5% per quarter or part of the quarter?
- Whether ITC to be reversed shall be reduced by 1/60th per month or part of the month?

Note: calculation on the basis of month may differ from the calculation on the basis of quarter.

It becomes relevant to mention other related provisions like Rule 32 where 5% per quarter has been used. similarly, again in Rule 40, 5% per quarter has been used. But in Rule 44, 1/60 per month has been used.

This is matter of differences, so author reserves his views and leaves it to the wisdom of learned members.

When capital goods being used for common purposes are subsequently used exclusively for effecting taxable supplies

It is dealt by implication through Rule 43(1)(f). As the assets is no more common capital goods, the same can be excluded from Tr. ITC would have already been credited in electronic credit ledger.

When capital goods being used exclusively for effecting taxable supplies are subsequently used exclusively for effecting exempt supplies

Issue is not fully addressed in the law. Wherever, taxpayer subsequently deals entirely with exempt supplies, then it is covered by section 18(1)(d) read with Rule 44. While other case where he continues to deal with taxable supplies also, but the said capital goods becomes exclusively used for effecting exempted supplies, then there is no specific provision

As per section 17(2) r.w. Rule 43(1)(a), ITC shall be reversed.

Again, Rule 43 is silent on whether useful life of such capital goods is also to be taken 5 years. But it becomes relevant here to mention Rule 44 where law states that life of capital goods shall be taken to be 5 years. So here also, one has to decide whether –

- Whether ITC to be reversed shall be reduced by 5% per quarter or part of the quarter?
- Whether ITC to be reversed shall be reduced by 1/60th per month or part of the month?

When capital goods being used exclusively for effecting exempt supplies are subsequently used exclusively for effecting taxable supplies

It is covered by section 18(1)(d) read with Rule 40(1). It is also relevant to note the restriction in this regard in section 18(2). While rule 43 permits ITC on capital goods, which was on receipt used for effecting exclusively exempt supplies and subsequently used for effecting common supplies, without time restriction of one year from date of invoice. But, there is restriction when the said item is subsequently used for effecting exclusively taxable supplies in the section 18(2). However, issue would remain open as regards capital goods being exclusively used for non-business purpose is subsequently being used exclusively for business purpose. Subject to conditions under section 16(3) and 16(4), ITC can be availed after reducing the value (quarterly or monthly).

V. Conclusion

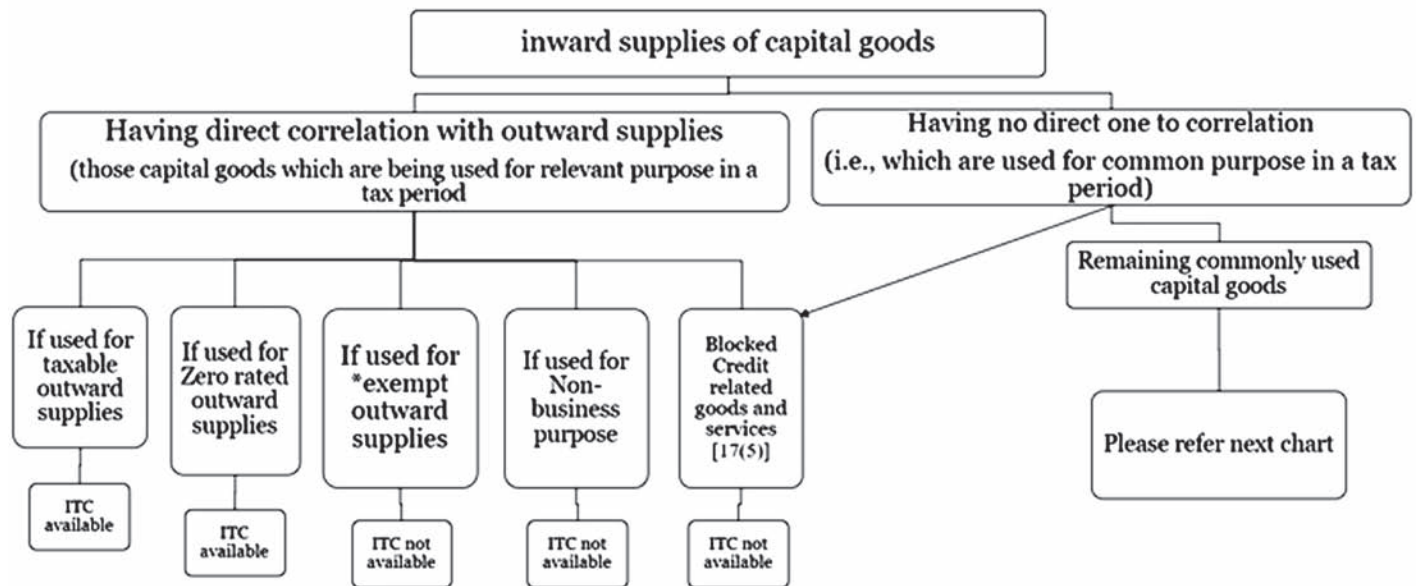
Rule 43 is truly remarkable as it provides great insight into the thinking of relating credit to taxable outward supplies even if it were for part of useful life of the capital goods. While it has been possible with capital goods, avoiding cascading of taxes has not been all that successful in other areas and we can swallow it as Government's policy such as blocked credits. And a bird's eye view is also appended.

This analysis of Rule 43 has been authored by CA Shashank Gupta, Agra and reviewed by CA Kasi V Viswanathan, Chennai. Author's have explored the workings of the rule based on the specific circumstances visualized and readers are to consider those circumstances. These are views of the Authors and ICAI does not endorse the same as its official interpretation of the relevant law.

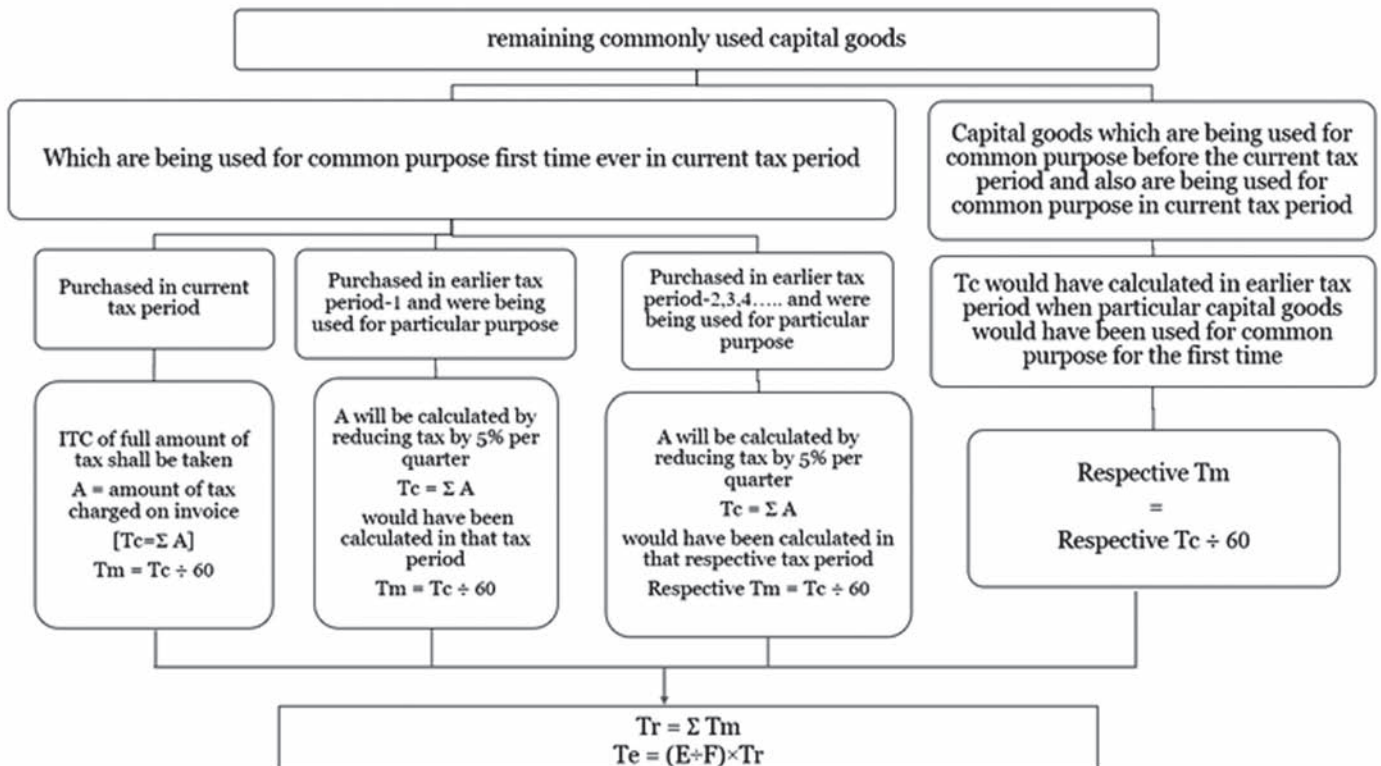
Bird's eye view of Rule 43

Step-1: Find out all those capital goods which are not older than 5 years from the date of invoice. Because, as explained above, self-assessment of ITC on capital goods older than 5 years would have been dealt with earlier.

Step-2: Classification of capital goods as identified in step-1 and respective treatment



*exempt supplies includes non-taxable supplies



EFFECT OF RETENTION OF ARTICLE 366(29A) IN THE CONSTITUTION AFTER GST

Background of Article 366(29A):

The Constitution (Forty-sixth Amendment) Act, 1982 inserted¹ clause (29A) in Article 366 of the Constitution. The clause read as under:

(29A) “tax on the sale or purchase of goods” includes-

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) invoked in the execution of a works contract;

(c) a tax on the delivery of goods on hire purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

The amendment introduced fiction by which six types of transactions were brought to tax as sale of goods. Each one of the sub-clauses of article 366(29A) introduced by the 46th

Amendment was a result of ruling of the Courts which was sought to be neutralized or modified. Sub-clause (a) is the outcome of *New India Sugar Mills Ltd. v. Commissioner of Sales Tax*². Sub-clause (b) is the result of *State of Madras v Gannon Dunkerly and Co.*³. Sub-clause (c) is the result of *K. L. Johar and Co. v. Deputy CTO*⁴. Sub-clause (d) is consequent to *A. V. Meiyappan v. CCT*⁵. Sub-clause (e) is the result of *Joint Commercial Tax Officer v. Young Men’s Indian Association*⁶. Sub-clause (f) is the result of *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*⁷.

Preparation for GST:

The Constitution (One Hundred and Fifteenth Amendment) Bill, 2011, proposed to delete clause (29A) in Article 366. However, the bill which was introduced later and which led enactment of the Constitution (One Hundred and First Amendment) Act, 2016 did not delete that clause.

The issues came up for discussion before the Select Committee of Rajya Sabha to whom the aforesaid Bill, as passed by Lok Sabha on 6th May, 2015, was referred. Before the committee, some experts opined that in view of Article 246A empowering both Centre and States to levy tax on supply of goods and services, clause (29A) of Article 366 may be considered for deletion as this would become redundant. However, the Committee decided to retain the said Article 366(29A). No discussion/rationale for this is recorded in the report of the committee⁸.

Fallout of retention of the clause (29A):

Schedule II of the CGST Act, 2017 classifies certain supplies as ‘goods’ or ‘services’. Out of the matters listed in clause (29A) of Article 366, which deems certain transactions as sale of goods, GST law treats (i) works contract (ii) transfer of right to use goods and (iii) supply of goods, being food etc. as part of any service, as service. Paragraph 5(f) dealing with transfer of

¹W.e.f.02.02.1983

²[1963] 14 STC 316 (SC); [1963] Supp 2 SCR 459 and *Vishnu Agencies (P.) Ltd. v. Commercial Tax Officer* AIR 1978 SC 449; [1978] 42 STC 31 (SC). Covers a situation where the consensual element is lacking. This normally takes place in an involuntary sale.

³[1959] SCR 379; [1958] 9 STC 353 (SC) – Works contracts

⁴[1965] 2 SCR 112; [1965] 16 STC 213 (SC) - hire-purchase where the title to the goods is not transferred, yet by fiction of law, it is treated as a sale

⁵[1967] 20 STC 115 (Mad) - The title to the goods remains with the transferor who only transfers the right to use the goods to the purchaser.

⁶[1970] 1 SCC 462; [1970] 26 STC 241 (SC) – Supplies by clubs to its members

⁷[1978] 4 SCC 36; [1978] 42 STC 386 (SC) and *State of H. P. v. Associated Hotels of India Ltd.* [1972] 29 STC 474 (SC); [1972] 1 SCC 472 – Supply of food and beverages in hotels and restaurants

⁸Presented to the Rajya Sabha on 22nd July, 2015

right to use goods and paragraph 6 (b) dealing with supply of goods, being food etc. as part of any service, the words used in the clause are almost identical to the words contained in clause (29A) which is apparent from use of words “for cash, deferred payment or other valuable consideration”. Further, so far paragraph 6 (b) is concerned, copying of words “in any other manner whatsoever” from sub-clause (f) in clause (29A) has the effect of even sale of packaged eatables and beverages over the counter labelled as supply of service.

Treatment of these transactions as ‘service’ under GST law, is in direct conflict with clause (29A) in Article 366.

Due to absence of definition of ‘supply’ in the Constitution, the task of defining the term has been left on legislature.. This leads to a situation where sub-sect is brought in before the sect itself. If we do not treat clause (29A) as sub-sect of clause (26A) then the two clauses are independent and the GST legislation is in conflict with Constitution.

Is clause (29A) is repealed by implication:

Though under the GST law, levy of tax is on ‘supply’, the law recognises concept of ‘sale’. It is settled law that a service cannot be subject matter of sale. However right to receive service can be bought and sold¹.

‘Supply’ in section 7 of the CGST Act includes supply in the form of ‘sale’. In other words it can be said that ‘tax on supply’ includes ‘tax on sale’. ‘Tax on sale’ has been given an inclusive meaning under Article 366(29A) of the Constitution. If that is so, for taxing transactions listed in clause (29A) requirement of bifurcating between ‘goods’ and ‘services’ and then applying applicable rate of tax will continue. Such an interpretation will lead to anarchy in taxation.

Some experts are of the view that Article 366(29A) of the Constitution being a definition clause only, its role is limited to define the phrase used elsewhere in the Constitution. Entry 54 in State list empowers States to levy “taxes on the sale or purchase of goods.....” When that entry has been modified restricting its applicability to sale of specified goods, clause (29A) became redundant.

To make the scheme of GST workable despite clause (29A) in article 366 being there in the Constitution, it should be assumed that the said Article gets repealed by implication. Repeal by implication has been dealt with by at least two judgments of the Supreme Court. ²In State of Orissa and another v M.A. Tulloch and Co., [1964] 4 SCR 461, the Court considered the question as

to whether the expression “repeal” in Section 6 of the General Clauses Act would be of sufficient amplitude to cover cases of implied repeal. The Court stated:

“The next question is whether the application of that principle could or ought to be limited to cases where a particular form of words is used to indicate that the earlier law has been repealed. The entire theory underlying implied repeals is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drafting but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word ‘repeal’ in the later statute.” (at page 483).

Similarly in Ratan Lal Aduka v Union of India, [1989] 3 SCC 537, the Supreme Court held that the substituted Section 80 of the Code of Civil Procedure repealed by implication, insofar as the railways are concerned, Section 20 of the self-same code. In so holding, the Court stated:-

“The doctrine of implied repeal is based on the postulate that the legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts, in applying this doctrine, are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments. But in a conceivable case, the very existence of two provisions may by itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to the same matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the two sets of provisions were not expected to be applied simultaneously. Section 80 is a special provision. It deals with certain class of suits distinguishable on the basis of their particular subject matters.” (at para 18).

For repelling the apprehension that principals applied in interpretation of law cannot be applied with the same brush while interpreting the Constitution, a reference may be made to KeshvanandaBharati v State of Kerala³ and I.R. Coelho v State of Tamil Nadu⁴ wherein the Supreme Court held that indeed the Constitution is law, in its ordinary sense too; however, it is also a law made by the people as a nation, through its Constituent assembly, in a foundational and a constitutive moment. Written constitutions seek to delineate the spheres

¹Division Bench of the Karnataka High Court in Bharti Airtel Limited v Dy Commissioner of Income Tax [2015] 372 ITR 33 (Karn); 2014-TIOL-2113-HC-Kar-IT; TS-722-HC-2014(Kar) Judgment dated August 14, 2014

²As quoted in Fibre Boards (P) Limited, Bangalore v Commissioner of Income Tax, Bangalore [2015] 376 ITR 596 (SC); 2015-TIOL-178-SC-IT two members bench judgment dated August 11, 2015.

³[1973] 4 SCC 225

⁴[2007] 2 SCC 1

of actions of, with more or less strictness, and the extent of powers exercisable therein by, various organs of the State. Such institutional arrangements, though political at the time they were made, are also legal once made. They are legal, inter alia, in the sense that they are susceptible to judicial review with regard to determination of vires of any of the actions of the organs of the State constituted. The actions of such organs are also justiciable, in appropriate cases, where the values or the scheme of the Constitution may have been transgressed. The essential features that give the Constitution its identity, cannot be changed by the amending powers of the very organs that are constituted by it. Under our Constitution, while some features are capable of being amended by Parliament, pursuant to the amending power granted by Article 368, the essential features – the basic structure – of the Constitution is beyond such powers of Parliament. The power to make changes to the basic structure of the Constitution vests only in the people sitting, as a nation, through its representatives in a Constitution Assembly.

¹Earlier in *Good Year India Limited v State of Haryana & Anr.* AIR

¹As quoted in *GVK Industries Limited v Income tax officer* [2017] 48 STR 177 (SC) – Five members Bench judgment dated March 01, 2011 – para 25 & 26
²[1990] 188 ITR 402; [1990] 76 STC 71.

³Sub-clause (e) talks about supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration. Para 7 in schedule II of the CGST Act, 2017 declares that “supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration” shall be treated as supply.

⁴*State of West Bengal and others v Calcutta Club Limited* [2016] 96 VST 20 (SC)

1990 SC 781² Para 17 the Supreme Court held that Principles of interpretation of a statute are not foreign and altogether irrelevant for the purposes of interpreting a constitutional provision and/or a specific Legislative Entry.

It is interesting to note that officers in Department appears to be of the view that clause (29A) is active and can be used for interpreting provisions of GST law. In circular number 35/9/2018-GST dated 5th March, 2018, wherein the Department has reiterated its understanding in erstwhile service tax law about taxability of transactions between members of a joint venture applicable for taxation under GST also, they have claimed to have drawn strength from the provisions in sub-clause (e) of clause (29A) of article 366³. The reliance is strange as sub-clause (e) is all about supply of goods, whereas circular attempts to clarify levy of tax in the name of services. It will not be out of place here to note that the effect of sub-clause (e) is still unsettled and the matter is pending before a larger bench of the Supreme Court⁴.

CUSTOMS UPDATE

Duty Drawback rates notified

The Central Government vide Notification no. 95/2018 Customs (N.T) dated 6th December, 2018 has notified the rates of drawback for the tariff item corresponding to the export goods as if it were a claim for duty drawback filed with reference to such rate and cap. The duty drawback rates schedule is subject to some Notes and conditions few of which are described below:

- The general rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 shall, mutatis mutandis, apply for classifying the export goods listed in the drawback rates Schedule.
- Drawback at the rates specified in the said Schedule shall be applicable only if the procedural requirements for claiming drawback as specified in rule 12, 13 and 14 of the said rules, unless otherwise relaxed by the competent authority, are satisfied.
- Whenever a composite article is exported for which any specific rate has not been provided in the said Schedule, the rates of drawback applicable to various constituent materials can be extended to the composite article

according to net content of such materials on the basis of a self-declaration to be furnished by the exporter to this effect and in case of doubt or where there is any information contrary to the declarations, the proper officer of customs shall cause a verification of such declarations.

This notification shall come into force on the 19th day of December, 2018.

Drawback rates are available at <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/csnt95-2018.pdf>;jsessionid=B21F9D2F9694432D2F4F53C24BDDDD16

Comments: Care should be taken to review the rates of drawback and the notes that are now made applicable in a very granular manner to look for any deviations from well-established practices in the past. It appears that reference to these notes made in such a cautious manner may be an attempt at unsettling past practices. Also the legality of ‘notes and conditions’ is to be evaluated as this is out of the ordinary for Government to be applying conditions to drawback rates outside of the Rules.

[Notification no. 95/2018 Customs (N.T) dated 6th December, 2018]

FAQ'S ON FORM GSTR-9 – ANNUAL RETURN

Q1. What is Legal provision for filling GST Annual Return?

Ans. Legal requirement of filing Annual return hereafter called GSTR-9 is governed by section 35(5) and section 44(1) of CGST Act. Section 44(1) of CGST Act read with Rule 80(1) of CGST Rules requires that every Registered person other than

- an Input Service Distributor,
- a person paying tax under section 51 (TDS) or section 52 (TCS),
- a casual taxable person and
- a non-resident taxable person,

shall furnish an annual return for every financial year electronically in Form GSTR-9 through the common portal (www.gst.gov.in) either directly or through facilitation center on or before the thirty-first day of December following the end of such financial year.

Further, as per section 35(5) of CGST Act, every registered person whose turnover during a financial year exceeds the prescribed limit (Rs. 2 cr.) shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement (GSTR-9C) under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed. Reconciliation statement – GSTR-9C is reconciliation of data as per books of accounts and data as reported in GSTR-9.

Q2. What is Form GSTR-9A and who is required to file it?

Ans. GSTR-9A is Annual return for a supplier who was under composition scheme as per section 10 of CGST Act anytime during the relevant financial year.

Q3. What is Form GSTR-9B and who is required to file it?

Ans. GSTR-9B is Annual return for person paying tax under section 52 which is person who is required to collect tax. Since provision of section 52 is applicable from 01st October 2018 only, such persons are not required to file GSTR-9B for the year 2017-18.

Q4. Which Annual return is to be filed by taxable person if he was earlier registered as composition taxpayer but later he switched over from composition scheme and his status as on 31st March 2018 is a regular taxpayer?

Ans. In such case, he shall be required to file GSTR-9A for the period he was registered as composition taxpayer and for the remaining financial year, he shall be required to file GSTR-9. Hence, he shall be required to file both the Annual Return GSTR-9A and GSTR-9.

Q5. Whether a Taxpayer shall be required to file GSTR-9 even though his registration has been cancelled before

31st March 2018? Whether answer remains the same if his application for cancellation was pending as on 31st March 2018?

Ans. As per Legal provision of Section 44(1) of CGST Act, every registered person shall be required to file GSTR-9. Hence, even if the status of taxpayer is not registered as on 31st March 2018 but he was registered between July-17 to March-18, he shall be required to file GSTR-9 providing details for the period during which he was registered.

Similarly, if a taxpayer had applied for cancellation of registration but the application was pending as on 31st March 2018, he shall be required to file GSTR-9.

Q6. What is the Due date of filling GSTR-9?

Ans. As per section 44(1) of CGST Act, every registered person is required to file annual return on or before 31st December of the year succeeding the financial year in form GSTR-9. For the FY 2017-18, due date of filling GSTR-9 is 31st December 2018.

Q7. Whether transactions for the period April-17 to June-17 are also to be included in GSTR-9 for FY 2017-18?

Ans. No, instructions forming part of GSTR-9 which was notified by Notification No. 39/2018 dated 04th September 2018, clearly mentions that only details for the period July 2017 to March 2018 are to be provided in GSTR-9.

Q8. If a Taxpayer has obtained more than one GST Registration even though he has a single PAN, then whether GSTR-9 is to be filed at Entity level or GSTIN wise?

Ans. As per Legal provision of Section 44(1) of CGST Act, every registered person shall be required to file GSTR-9. Hence, if a Taxpayer has obtained multiple GST Registrations whether in one state or more than one state, it shall be treated as a distinct person in respect of each such registration as per section 25(4) of CGST Act. Hence, GSTR-9 is required to be filed separately for each such GSTIN.

Q9. What is the difference between GSTR-9 and GSTR-9C?

Ans. As per section 35(5) of CGST Act, every registered person whose turnover during the financial year exceeds prescribed limit (Rs. 2 cr.) shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 which is called GSTR-9C and such other documents in such form and manner as may be prescribed. Hence, requirement of GST Audit u/s 35(5) would arise only if prescribed limit of turnover exceeds Rs. 2 cr. and certified reconciliation statement -GSTR-9C shall require to be submitted.

On the other hand, GSTR-9 is an Annual return which is required to be filed by every registered person irrespective of threshold limit of turnover.

Q10. What will be source of information for filling up GSTR-9?

Ans. GSTR-9 is merely a compilation of data filed in GSTR-3B and GSTR-1. As per the instructions of the form GSTR-9, it is stated that information of outward supplies 'may' be derived from Form GSTR 1. Hence, so far as Outward supplies and tax payable in the annual return is concerned, the same are to be extracted from Form GSTR 1 only.

Inward supplies, input tax credit and the net tax paid in cash are to be gathered from Form GSTR 3B.

But before filing GSTR-9, Value as per GSTR-3B and GSTR-1 must align. If there are any differences, then the same must be adjusted to subsequent returns filed up to September-18 as per circular 26/26/2017-GST dated 29th December 2017.

It seems that the inherent assumption that has been taken while drafting the form is that Form GSTR 3B and Form GSTR 1 are in consonance with each other which may not be always true.

In case the values as per Form GSTR 3B and GSTR 1 are not matching with each other, one may arrive at a differential value of tax payable and tax paid as per annual return. A clarification may be expected from the Government regarding the manner of payment of any additional liability (if any). However, if one faces such a situation, then the additional tax liability may be paid through Form GSTR 3B of the subsequent month/Form DRC-03.

Q11. If taxpayer has identified some information which are missed to be reported in GSTR-3B or GSTR-1, whether the same can be added while filing GSTR-9?

Ans. As discussed above, it seems that GSTR-9 is a merely compilation of data filed in GSTR-3B and GSTR-1 and no other information can be incorporated in GSTR-9. GSTR-9 requires details from monthly/quarterly returns on 'as is' basis. Even if a taxpayer has identified data fed in GSTR-1 / GSTR-3B as incorrect, still the same data is to be taken for reporting in annual return. The actual data present in the financial statements and the books of accounts of the entity is not to be considered at all for the purpose of reporting in annual return. So, the intent of the form is not to allow rectification of data filed in the monthly/Quarterly returns but only aggregation of such data in respect of the financial year.

Q12. If no other information can be furnished in GSTR-9 over and above what is stated in GSTR-1 and GSTR-3B, then how can the taxpayer pay the tax liability in case he identifies certain liabilities which are missed to be reported?

Ans. If there is any additional liability missed to be reported in GSTR-1 / GSTR-3B pertaining to 2017-18, the same will be reported in subsequent GSTR-1 / GSTR-3B up to September 2018. However, if the same is missed to be

reported in GSTR-1 / GSTR-3B up to September 2018, as of now there is no clarity provided by Government whether the same can be paid through GSTR-3B or DRC-03.

Q13. If GSTR-9 is a compilation of the earlier returns (GSTR-1 / GSTR-3B) filed, then whether GSTR-9 will be auto-populated?

Ans. No clarification in this regards has been received from Government but it seems that system computed GSTR-9 in PDF format will be available auto populating figures to the extent possible which can be used to prepare GSTR-9 on portal.

Q14. Which information shall be provided in Table 4?

Ans. As per heading of Table-4,

- Details of Advances on which tax is payable,
- Inwardsupply on which tax is payable on RCM basis and
- outward supply on which Tax is payable

Which was already reported in returns filed during the financial year that is for the period July-17 to March-18 is to be reported in Table-4 of GSTR-9. Please note that expression return filed during the financial year will have to be read as return filed for the financial year. Even belated returns filed for the period July-17 to March-18 is to be consider for providing information in Table-4.

Table-4K and 4L also contains details of supplies / tax declared through Amendments. In this Table, amendments related to invoices of July-17 to March-18 declared in GSTR-1 of July-17 to March-18 will be reported in Table-4 of GSTR 9;

and

Amendments related to invoices of July-17 to March-18 declared in GSTR-1 of April-18 to September-18 will only be reported in Part V Table 10& 11 of GSTR 9.

E.g. Tax payer has filed GSTR-1 for the month of August-17. Now he has identified one invoice to be amended in August-17 return. If such amendments have been made up to March-18 return, then the same will be reported in Table-4K/4L of GSTR-9. However, in case such amendment is made in GSTR-1 of April-18, then the same will be reported in Table 10 or 11 as the case may be.

Q15. Where to report DN / CN issued to unregistered person?

Ans. Unlike B2B supplies, DN/CN issued to unregistered person is to be adjusted against outward supply and net supply and is to be furnished in Table 4A. Even credit note raised against transaction reported as B2C in GSTR-1 is also to be adjusted in Table-4A.

Q16. Whether supply made to registered person (B2B) as required in Table-4B also includes outward supply on which tax is payable by recipient on reverse charge basis?

Ans. No, only outward supply made to registered person on which tax is payable on forward charge basis by supplier will be reported in Table 4B. Outward supplies under reverse charge shall be reported in Table-5C.e.g. in case

of GTA operator filing his GSTR-9, he is required to report outward supply in Table-5C.

Q17. Where to report stock transfer made to another branch situated in another state if both are registered?

Ans. Since both branches are registered persons for a particular state, these transactions are to be reported in supplies made to registered person (B2B) Table 4B.

Q18. Tax payer has made two type of exports, one with payment of tax and the other without payment of tax. Where to report both these transactions?

Ans. Export with payment of tax is to be reported in Table-4C. This table warrants details of transactions where tax is payable. Exports without payment of tax is to be reported in Table-5A. Same principle will hold good for supply to SEZ also.

Q19. Whether all advances on which tax is paid but subsequently got adjusted against invoices shall also to be reported in Table-4F?

Ans. No, only outstanding advances as on 31st March 2018 on which tax was paid but invoice not issued against the same are to be reported in Table-4F.

Q20. Whether advances received during pre-GST regime but against which invoice is not yet issued is to be reported in Table-4F?

Ans. No, only advances on which GST has been paid but remained unadjusted as invoice not issued is to be reported in Table-4F.

Q21. Which information shall be to be provided in Table 4G for Inward supply on which tax is to be paid on reverse charge basis?

Ans. Tax paid on reverse charge basis under these sections are to be reported in Table 4G. There are two type of reverse charge transactions, one is specific reverse charge on certain supplies u/s 9(3) of CGST Act / 5(3) of IGST Act and another is general reverse charge which was effective till 12th October 2017 applicable on procurement of inward supply from unregistered person u/s 9(4) of CGST Act / 5(4) of IGST Act.

Q22. Whether credit note / debit note issued during 18-19 in respect of transactions of July-17 to March-18 is to be reported in Table 4I and 4J?

Ans. No, only credit note / debit note issued between July-17 to March-18 is to be reported in 4I and 4J. If credit note / debit note is issued between April-18 to September-18, then the same would be reported in Table-10 / Table 11 of GSTR-9. Please note that financial credit note which doesn't comply with requirement of section 34(1) is not to be added in Table 4I or Table 11.

Q23. How are amendments made in supply to be reported in GSTR-9?

Ans. Amendments in supply is to be reported in Table-4K, 4L, 5J, 5K, 10 and 11 depending on nature of transaction. E.g. If value of original B2B supply is Rs.1000 but which

was reported as Rs.100 in GSTR-1 and subsequently amendments has been made in next GSTR-1 with correct value then Rs.100 will be reported in Table-4B and Rs.900 will be reported in Table-4K.

Q24. Which information is to be provided in Table-5?

Ans. Details of outward supplies on which no tax is payable like Export or SEZ supply with LUT or Bond is to be reported in Table-5. Even outward supply on which recipient is liable to pay tax on RCM basis is to be reported here only.

Q25. Which information is to be reported in Table-6?

Ans. In Table-6, Input tax credit availed in GSTR-3B filed for the period July-17 to March-18 will be auto populated in Table-6A. Break up of such ITC will be reported in Table-6B to 6H. Further, Transitional credit which was not reported in GSTR-3B is to be reported in Table 6K and 6L. Details required in each table are as below:

- Table-6A: Auto populated ITC from GSTR-3B
- Table-6B: All other ITC details
- Table-6C: ITC of tax paid under reverse charge basis u/s 9(4) or 5(4)
- Table-6D: ITC of tax paid under reverse charge basis u/s 9(3) or 5(3)
- Table-6E: IGST paid on import of goods
- Table-6F: IGST paid on import of services
- Table-6G: ITC received from ISD
- Table-6H: ITC reclaimed which was reversed earlier
- Table-6K: ITC of TRAN-I
- Table-6L: ITC of TRAN-II

Q26. GSTR-3B doesn't require ITC to be bifurcated into Input, Input service and capital goods whereas Input tax credit details as per Table-6 requires such break up. How to report the same?

Ans. Basically GSTR-9 is prepared based on earlier process of filling GSTR-1, GSTR-2 and GSTR-3. In GSTR-2, there was a requirement to bifurcate ITC into Input, Input service and capital goods. However, as GSTR-2 was not required to be filed till now, one will have to carry out additional exercise to identify category of ITC into Input, Input service and capital goods from books of account.

Q27. Whether any ITC pertains to FY 2017-18 but claimed subsequently in GSTR-3B of April-18 to September-18 will be reported in Table-6?

Ans. No. Even though ITC belongs to FY 2017-18, the same will not be reported here. Only ITC claimed up to March-2018 in GSTR-3B will be reported here.

Q28. Whether ITC of TRAN-II filed after March-18 will be reported in Table-6L?

Ans. No. ITC of TRAN-II credited in electronic credit ledger up to 31st March 2018 only be reported in Table-6L. Same way any reversal which have impact on electronic credit ledger up to 31st March 2018 is to be reported in Table-7G.

Q29. Which information is provided in "Any other ITC availed but not specified above" in Table-6M?

Ans. Any other ITC which is not specifically included in 6B to 6L will be reported here. This will include ITC claimed through Form ITC-01, ITC-02, and TRAN-III credit.

Q30. What is scope of Table-7 so far as Table 7A to 7D is concerned?

Ans. ITC reversed as per various rules in GSTR-3B filed for the period up to March-18 is to be reported in Table-7.

- Table-7A: As per Rule-37.

As per proviso to section 16(2) of CGST Act read with Rule 37 of CGST Rules, Amount of ITC reversed on non-payment of value of supply along with tax within a period of 180 days from date of invoice is to be reported.

- Table-7B: As per Rule-39.

Rule 39 deals with the procedure for distribution of input tax credit by Input Service Distributor (ISD). If any supplier gives credit note to the ISD then input tax credit is required to be reduced and shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed.

- Table-7C: As per Rule-42

Rule 42 of CGST Rules describes manner of determination of input tax credit in respect of inputs or input services and reversal thereof. If Input and Input service is used partly for business purpose and partly for non-business purpose or such input and input service is used for effecting taxable supply and exempt supply, then ITC reversal is required as per Rule-42. ITC reversed as per Rule-42 is to be reported in Table-7C.

- Table-7D: As per Rule-43

On similar lines of Rule 42, Reversal of input tax credit of capital goods is required when capital goods are used partly for business purpose and partly for non-business purpose or such capital goods are used for effecting taxable as well as exempt supply. ITC reversed on capital goods as per Rule-43 is to be reported in Table-7D.

Q31. Whether Ineligible ITC as reported in Table-4D of GSTR-3B is to be reported in Table-7E of GSTR-9?

Ans. No, Net ITC as per GSTR-3B does not take into consideration ineligible ITC as reported in Table-4D of GSTR-3B. So auto populated figure of Net ITC in Table-6A of GSTR-9 does not contain ineligible ITC. Since, taxpayer has not availed such ineligible ITC at all, there is no requirement to reverse it. However, if taxpayer later on identified certain ITC claimed to be ineligible at the time of filing GSTR-9 then such amount is to be reported in Table-7E of GSTR-9.

Q32. Which information is to be furnished in "other reversals" as mentioned in Table-7H?

Ans. Credits is required to be reversed as per rule 44 of the CGST Rules, 2017 in case of special circumstances read with section 18(4) and section 18(6) of the CGST Act, 2017. Any other credit reversal made up to March-18

not specified in Table-7A to 7G is to be reported in Table-7H. However, credit reversal pertaining to 2017-18 but reversed after March-18 is to be reported in Table-12.

Q33. Which information are contained in GSTR-2A Table-3 and Table-5 which are auto populated in Table-8A of GSTR-9?

Ans. Table-3 of GSTR-2A contains details of inward supplies received from registered person other than supplies attracting Reverse charge and Table-5 of GSTR-2A contains details of Debit note / credit note received during the current period.

Q34. What is the purpose of Table-8?

Ans. Basically Table-8 calculates total ITC that is deemed to be lapsed during the financial year 2017-18 which is sum total of the below two items:

a) Difference of ITC as per GSTR-2A and ITC actually availed

GSTR-2A reflects total ITC passed on to taxpayer but out of that taxpayer might not have claimed some ITC voluntarily (to be reflected in Table-8E) or he might not have claimed the same because it is ineligible (to be reflected in Table-8F).

b) Difference of IGST paid on Import and IGST credit availed

Further, at the time of Import, Taxpayer would have paid IGST but he might not have claimed full IGST paid as input tax credit.

Sum total of above differences are input tax credit which will not be available to taxpayer in 2017-18 is what Table-8 want to draw down.

Please note that there might be a situation where some ITC available in GSTR-2A but taxpayer may not have claimed it up to March-2018 but claimed during April-18 to Sep-18, that credit is also to be reported in Table-8C. This ITC will not form part of total ITC to be lapsed.

Unlike normal Input tax credit, government has not provided mechanism to report IGST on Import paid during 2017-18 but claimed in April-18 to Sep-18 which taxpayer can legally claim. More clarification from the government is expected in this regard.

Q35. Whether total ITC lapsed as per Table-8K will reduce ITC from Electronic credit ledger?

Ans. No, total ITC lapsed is only informative and it will not have any impact on Electronic credit ledger.

Q36. Which period information is to be provided in details of tax payable and paid in Part-IV Table-9?

Ans. Tax payable and paid details are to be extracted from GSTR-3B for the period July-17 to March-18.

Q37. What is the scope of Part-V Table-10 to 13?

Ans. Table 10 to 13 plays a very important role in GSTR-9. Any changes in supply of July-17 to March-18, made through Amendments, credit note or debit notes which was

reported in GSTR-1 of April-18 to September-18 is to be reported in Table-10 if the same is resulting into increase in value of supply. However, if it is resulting into reduction in value of supply then the same is to be reported in Table -11.

Important point to note here is that only credit note or debit note issued during April-18 to September-18 for supply effected during July-17 to March-18 is to be reported in Table-10 and 11, as the case may be.

Similarly, if any input tax credit belongs to the period July-17 to March-18 but which has been claimed in GSTR-3B of April-18 to September-18 is to be reported in Table-12 and 13. If the same is resulting into reversal of Input tax credit, then it will form part of Table 12 and it will be reported in Table-13 if the same is resulting into addition of input tax credit.

Important point to note here is that only additional or reduction in ITC belongs to July-17 to March-18 is to be reported in Table-12 and 13 as the case may be.

Q38. How differential tax payable is calculated as per Table-14?

Ans. As discussed above, when there is a change in supply effected during July-17 to March-18 adjustment is required to be reported in Table-10 and 11. Such amount of net tax payable will be reported in Table-14.

Q39. GST Refund is claimed before March-18 but sanctioned in April-18. How to report such kind of situation in Part VI Table-15?

Ans. GST Refund claimed during July-17 to March-18 is to be reported in Table-15A. If refund is sanctioned after March-18 then that is not to be reported in Table-15B. Same principle will hold good for other refund and demand details. Cutoff date to report transactions here is 31st March 2018.

Q40. Refund of erstwhile law was claimed before July-17 but received in GST regime. Whether the same is to be reported in Table-15B?

Ans. No. Non-GST refund claim as well as Non-GST demand is not to be reported in table-15.

Q41. Taxpayer has received a notice from its jurisdiction range office that there is a tax difference between GSTR-

1 vs GSTR-3B / GSTR-3B vs GSTR-2A. Whether such tax differences are to be reported in total demand of tax in Table-15E?

Ans. No, demand of tax for which an order confirming the demand has been issued by adjudicating authority shall be reported in Table-15E. Only notice received asking for reasons / reconciliation of tax differences between returns filed cannot be said to be an order confirming demand of tax. So, the same will not be reported in Table-15E.

Q42. Goods sent to job worker before July-17 and returned between the periods July-17 to March-18. Whether this transaction is to be reported in Table-16B?

Ans. No, this situation gets covered by section 141 of CGST Act and not by section 143 of CGST Act. Hence, they are not required to be reported. If goods are returned within stipulated time as provided in section 141 then no tax shall be payable. However, if goods are returned beyond the stipulated time as provided in section 141 then input tax credit availed by the Principal shall be recovered as arrears of tax under CGST Law and no input tax credit of such tax paid shall be allowed under the CGST Law.

Q43. How to extract details of HSN wise summary of inward supplies where the same is not required to be reported in GSTR-3B?

Ans. GSTR-9 is prepared based on earlier process of filing GSTR-1, GSTR-2 and GSTR-3. In GSTR-2, there was a requirement to report details of HSN wise summary of inward supplies. However, as GSTR-2 was not required to be filed till now, one will have to carry out an additional exercise to identify and report HSN wise summary from the books of accounts.

Q44. Whether GSTR-9 can be revised?

Ans. No such option has been provided in the law till now.

Q45. How much late fee is payable for late filing of GSTR-9?

Ans. As per section 47(2) of CGST Act, Late fee for belated filing of GSTR-9 is Rs.100 per day subject to maximum of 0.25% of turnover in a state/UT. Similar provision is there in SGST Act also. Hence, in total there will be late fee of Rs.200 per day subject to 0.50% of turnover in a state on late filing of GSTR-9.



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STRUCTURE OF GSTIN

1. GSTIN stands for “Goods and Services Tax Identification Number” unique to a legal person (Individual, Partnership, LLP, AOP/BOI, Company etc.). Each tax payer who is obligated or volunteered to register shall/may, as the case may be, apply for registration under GST Law as per the procedures prescribed under the Law. Subsequent to such application, the tax payer will be assigned a 15-digit GSTIN on completion of the registration. No doubt, a taxpayer can seek multiple registration in a State.
2. The first two digits of GSTIN will represent the State Code according to Indian Census 2011. Each State has a unique two-digit code like “29” for Karnataka and “27” for Maharashtra.
3. The next ten digits of GSTIN will be the PAN/ TAN of the taxpayer which emphasizes the fact that a PAN is compulsory for any person who is required to take registration under GST. The only exception to this is registration in case of a non-resident taxable person (N RTP) wherein registration is granted even in the absence of PAN being allotted to such person. Registration to such person shall be granted based on the tax identification number or unique number on the basis of which the entity is identified by the foreign Government where the said entity is based.
4. The 13th digit indicates the number of registrations entity/person has within a State for the same PAN. It is an alpha-numeric number, first 1 to 9 and then A to Z, which will be assigned on the basis of number of registrations an entity, with the same PAN, has within one State. For example, if an entity has one registration only within a State then “1” will be assigned as the 13th digit of the GSTIN. If the same entity obtains another registration for say a business vertical or an SEZ within the same State, then the 13th digit of GSTIN assigned to this entity will become “2” so on and so forth.
5. The 14th digit is assigned based on the nature of the business of the assessee. Eg. “Z” is used as a default 14th digit in case of a regular tax payer.
6. The last digit (15th) is a check code which can be alpha-numeric character.
7. The GSTIN must be verified and checked with a Certificate of Registration in Form GSTR REG-06 issued in terms of Rule 10(1) of the CGST Rules, 2017.
8. One must ensure that the name as appearing on the PAN card is the same as that appearing on the “Certificate of Registration”. If there is any discrepancy, the same should be reported to the GSTN immediately or alternatively, if possible, corrected through amendment to the registration obtained.
9. The validation of GSTIN of any tax payer can be done on the GST portal to ensure whether the GSTIN quoted by such person, on various documents or correspondences, really belong to him.

An illustration of the structure of GSTIN

i. Regular Registration

Registration Type	Digit														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Regular Registration	State Code		PAN										No. of Registrations in the State	Code for Regular Registration	Check Digit
Example	2	9	X	X	X	X	X	X	X	X	X	X	1-9 or A to Z	Z	1-9 or A to Z

ii. N RTP

Registration Type	Digit														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
OIDAR	Special Code		Year of Registration		Country Code			5 Digit Serial Number per year					Code for OIDAR	Check Digit	
Example	9	9	1	7	U	S	A	0	0	0	1	5	O	S	1-9 or A to Z



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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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