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# ICAI-GST

NEWSLETTER

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



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# GST UPDATES

## Non-transition of CENVAT credit in certain cases

The Central Government vide Circular No.33/07/2018-GST dated 23rd February, 2018 has clarified that transition of CENVAT credit is not admissible in following cases :

### Non-utilization of Disputed credit carried forward

CENVAT credit pertaining to which a show cause notice was issued under rule 14 of the CENVAT credit Rules, 2004, which has been adjudicated and where in the last adjudication order or the last order-in-appeal, as it existed on 1st July, 2017, it was held that such credit is not admissible, than such CENVAT credit is not admissible and shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, till the order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in existence.

If such disputed credit is utilised, it shall be recovered from the tax payer, with interest and penalty as per the provisions of the Act.

Comment: It is interesting that recovery of transitional credit is mentioned when the matter is pending in appeal. On one hand, there has been an amendment in section 35F where on payment of 7.5%/10% the remainder of disputed tax will not be recovered and on the other the same tax albeit disputed, is sought to be recovered. Tax Payer, at the peril of interest, is welcome to utilize this tax but CBEC seems to think otherwise.

### Non-transition of Blocked Credit

CENVAT credit as is carried forward in the return relating to the period ending with the day immediately preceding the appointed day which is not eligible under the Act in terms of sub-section (5) of section 17 such as telecommunication towers and pipelines laid outside the factory premises. If blocked credit is carried forward and credited to the electronic credit ledger in contravention of section 140 of the Act, it shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, and shall be recovered from the tax payer with interest and penalty as per the provisions of the Act.

In cases, where the disputed credit or blocked credit is higher than Rs. 10 lakhs, the taxpayers shall submit an undertaking to the jurisdictional officer of the Central Government that such credit shall not be utilized or has not been availed as transitional credit, as the case may be.

Comment: TRAN1 being examined through Circular without any due process being followed. Filing undertaking of abstention

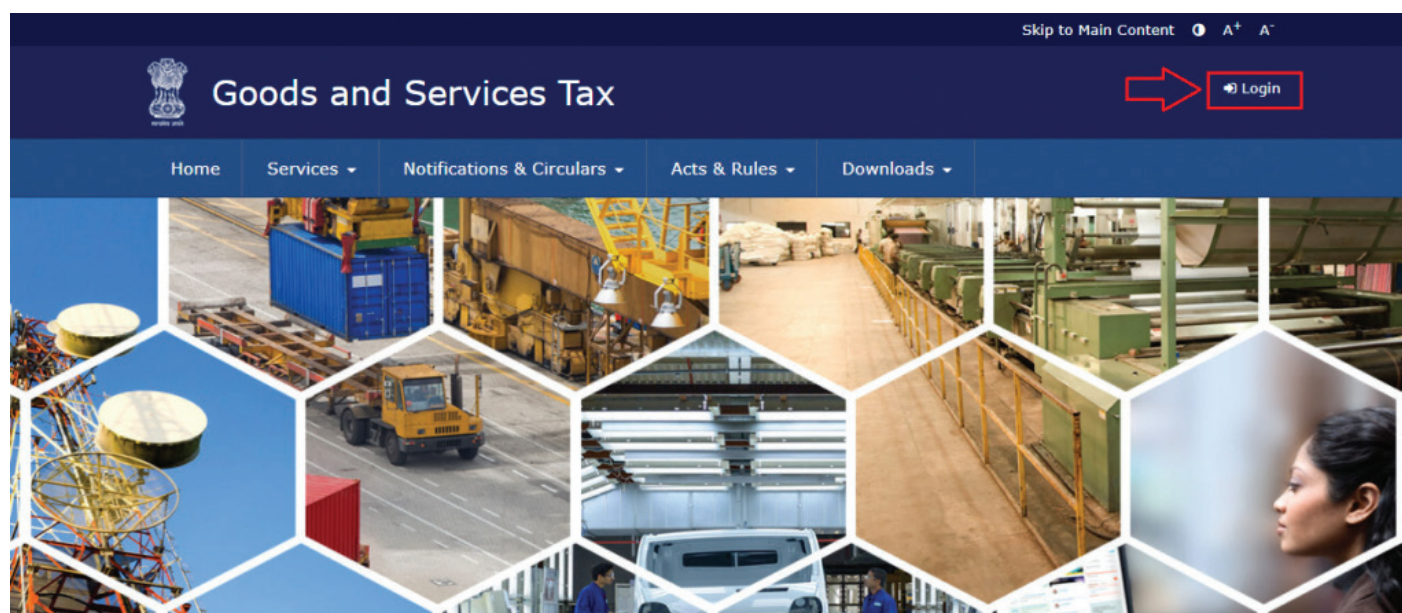


from using such credits are very new methods being adopted by Revenue.

*[Circular No.33/07/2018-GST dated 23rd February, 2018]*

## New features added in Form GSTR 3B and other functionalities made available on the GST Portal

- A) Filing of Form GSTR 3B : Filing of Form GSTR 3B has been made easier and user friendly with following features :
  - a) While proceeding to payment you can see details of balances as available in cash and credit ledgers at one place.
  - b) Tax liabilities as declared in GSTR 3B along with the credits gets updated in the ledgers and reflected in the "Tax payable" column of the payment section and can be seen while hovering on the said headings of credit in the payment section.
  - c) GST system auto-populates "Tax to be paid through ITC" fields with optimum utilization amounts based on provisions of the law relating to credit utilization. It is just suggestive and taxpayer may edit the ITC utilization. In case ITC utilization is changed, the cash to be paid also gets changed accordingly.
  - d) If available cash balance in Electronic cash ledger is not sufficient to offset the liabilities, additional cash required for paying liability is being displayed in the last column of the Table (Additional cash required). Taxpayers can create Challan for that amount directly by clicking on the CREATE CHALLAN button. Once you make online payment, system will navigate back to Payments Table. This reduces chances of payment of tax under wrong head.
  - e) Click the MAKE PAYMENT/POST CREDIT TO LEDGER button to pay off the liabilities or to claim credit in case of no liabilities.
  - f) FAQs and User Manual are provided along with pop ups, to guide you while filling Form GSTR 3B, at relevant pages.
  - g) Now, CGST and UGST/SGST need not be filled separately. Filing either of the taxes fills the other tax field automatically.



- h) Assessee can preview or download Form GSTR 3B to verify saved details in any table(s), anytime by Clicking PREVIEW DRAFT GSTR-3B button. This button will download the draft Summary page of your GSTR-3B for your review. It is recommended that this Summary page is downloaded and reviewed for the entries made in different sections, before proceeding with the payment of taxes.
- B) Form ITC 03 : Taxpayers who opt to pay tax under Section 10 or where goods or services both supplied becomes wholly exempt, can declare ITC Reversal/ Payment of tax on inputs held in stock or in semi-finished goods or in finished goods and capital goods, in Form GST ITC 03, made available on GST Portal.
- C) Miscellaneous changes: Following changes has also been done on GST Portal -
- Before logging onto the GST Portal, taxpayers can search results of last 10 Returns Transaction Status. The Status which will be shown as:
    - For Filed-Valid - Status to be shown as Filed
    - For Valid but Not Filed - Status to be shown as Not Filed
  - A field to enter cess amount paid on exports has been provided in Table 6A of Form GSTR 1
  - Taxpayers have been provided with facility to give details of supplies made to merchant exporters at rate of 0.1 %, in all returns.
  - In GSTR-1 & GSTR-5, on addition of records (Invoices/ Dr. Notes/ Cr. Notes), an option has been provided to taxpayer to select a lower tax rate for motor vehicle leasing businesses, as per Notification No. 37/2017-Central Tax (Rate), dated 13-10-2017.

- A field for providing "Reason for Issuing Note" was available in Credit/Debit note table, in Form GSTR 1, which was to be selected by the Taxpayer, on addition of Credit/Debit note. This dropdown for providing reason, which was a mandatory field, has now been removed from Form GSTR 1.

*[GSTN sent this mail to taxpayers]*

### **GST Revenue Collections for month of January 2018 (received in January/February up to 25th February) stand at Rs.86,318 crores**

**1.03 crore taxpayers have been registered under GST so far till 25th February, 2018. So far 17.65 lakh dealers got registered as composition dealers.**

Total Revenue Collection under GST: The last date for filing of GSTR 3B return for the month of January 2018 was 20th February 2018. The total Revenue received under GST for the month of January 2018 (received in January/February up to 25th February, 2018) has been Rs.86,318 crores. 1.03 crore taxpayers have been registered under GST so far till 25th February, 2018. So far 17.65 lakh dealers got registered as Composition Dealers. Out of these, 1.23 lakh Composition Dealers have opted-out of the Composition Scheme and have thus become regular taxpayers. Thus, till 25th February, 2018, there are 16.42 lakh Composition Dealers which are required to file returns every Quarter and the rest of 87.03 lakh taxpayers are required to file monthly returns.

57.78 lakh GSTR 3B returns have been filed for the month of January, 2018 till 25th February, 2018. This is 69 percent of total taxpayers which are required to file monthly returns. State-wise details of taxpayers registered and returns filed in February 2018 for the month of January 2018 is at Annexure.

Revenue of States: Of the Rs. 86,318 crores collected under GST for the month of February, 2018 (up to 25th February), Rs.14,233 crores have been collected as CGST, Rs.19,961 crores has been collected as SGST, Rs.43,794 crore has been collected as IGST and Rs.8,331 crores has been collected as Compensation Cess. Further, Rs.11,327 crores is being transferred from IGST to CGST account and Rs.13,479 crores is being transferred from IGST to SGST account by way of Settlement of Funds on account of cross utilization of IGST credit for payment of CGST and SGST respectively or due to inter State B2C transactions. Thus, a total amount of Rs.24,806 crores is being transferred from IGST to CGST/SGST account by way of settlement. Thus, the total collection of CGST and SGST for the month of February, 2018 (up to 25th February) is Rs.25,560 crores and Rs.33,440 crores respectively, including transfers by way of settlement.

### Postponement of E-Way Bill Rules

The Central Government vide Notification No. 11/2018- Central Tax dated 2nd February, 2018 hereby rescind the Notification No. 74/2017 – Central Tax dated the 29th December, 2017 and therefore the date of implementation of E-way bill rules have been deferred. This would however not alter the things done or omitted to be done before such rescission.

[Notification No. 11/2018- Central Tax dated 2nd February, 2018]

### Power to issue show cause notice

The Central Government vide Circular No. 31/05/2018-GST dated 9th February, 2018 has clarified the monetary limits up to which the functions in relation to issue of show cause notices and orders can be exercised by the proper officers.

Sl. No.	Officer of Central Tax	Monetary limit of the amount of tax (including cess) not paid or short paid or erroneously refunded or input tax credit of respective taxes wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act /section 20 of IGST Act.		
		Central tax	Integrated tax	Central tax and integrated tax
(1)	(2)	(3)	(4)	(5)
1.	Superintendent of Central Tax	Not exceeding Rs.10 lakhs	Not exceeding Rs.20 lakhs	Not exceeding Rs.20 lakhs
2.	Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakhs and not exceeding Rs.1 crore	Above Rs.20 lakhs and not exceeding Rs.2 crores	Above Rs.20 lakhs and not exceeding Rupees 2 crores
3.	Additional or Joint Commissioner of Central Tax	Above Rs.1 crore without any limit	Above Rs.2 crores without any limit	Above Rs.2 crores without any limit

[Circular No. 31/05/2018-GST dated 9th February, 2018]

### Clarifications regarding GST in respect of certain services

The Central Government vide Circular No. 32/06/2018-GST

dated 12th February 2018 has clarified certain issues regarding levy of GST on supply of services which are as follows:

S. No.	Issue	Clarification
1.	Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and thus, exempt under Sl. No. 1 of notification No. 12/2017-CT (Rate).	Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-CT (Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-CT(Rate) refers]
2.	Is GST leviable on the fee/amount charged in the following situations/cases: –	Services by any court or Tribunal established under any law for the time being in force are neither a supply of goods nor services. Consumer Disputes Redressal Commissions (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a tribunal on account of the following : -
	(1) A customer pays fees while registering complaints to Consumer Disputes Redressal Commission office and its subordinate offices. These fees are credited into State Customer Welfare Fund's bank account.	(1) Statement of objects and reasons as mentioned in the Consumer Protection Bill state that one of its objects is to provide speedy and simple redressal to consumer disputes, for which a quasijudicial machinery is sought to be set up at District, State and Central levels.

S. No.	Issue	Clarification
	<p>(2) Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required.</p> <p>(3) When a person files an appeal to Consumers Disputes Redressal Commission against order of District Forum, amount equal to 50% of total amount imposed by the District Forum or Rs.25000/- whichever is less, is required to be paid.</p>	<p>(2) The President of the District / State / National Disputes Redressal Commissions is a person who has been or is qualified to be a District Judge, High Court Judge and Supreme Court Judge respectively.</p> <p>(3) These Commissions have been vested with the powers of a civil court under CPC for issuing summons, enforcing attendance of defendants/ witnesses, reception of evidence, discovery/production of documents, examination of witnesses, etc.</p> <p>(4) Every proceeding in these Commissions is deemed to be judicial proceedings as per sections 193/228 of IPC.</p> <p>(5) The Commissions have been deemed to be a civil court under CrPC.</p> <p>(6) Appeals against District Commissions lie to State Commission while appeals against the State Commissions lie to the National Commission. Appeals against National Commission lie to the Supreme Court.</p> <p>In view of the aforesaid, it is hereby clarified that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.</p>
3.	Whether the services of elephant or camel ride, rickshaw ride and boat ride should be classified under heading 9964 (as passenger transport service) in which case, the rate of tax on such services will be 18% or under the heading 9996 (recreational, cultural and sporting services) treating them as joy rides, leviable to GST@ 28%?	Elephant/ camel joy rides cannot be classified as transportation services. These services will attract GST @ 18% with threshold exemption being available to small service providers. [Sl. No 34(iii) of notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended by notification No. 1/2018-CT (Rate) dated 25.01.2018 refers]
4.	What is the GST rate applicable on rental services of self-propelled access equipment (Boom Scissors/ Telehandlers)? The equipment is imported at GST rate of 28% and leased further in India where operator is supplied by the leasing company, diesel for working of machine is supplied by customer and transportation cost including loading and unloading is also paid by the customer	Leasing or rental services, with or without operator, for any purpose are taxed at the same rate of GST as applicable on supply of like goods involving transfer of title in goods. Thus, the GST rate for the rental services in the given case shall be 28%, provided the said goods attract GST of 28%. IGST paid at the time of import of these goods would be available for discharging IGST on rental services. Thus, only the value added gets taxed. [Sl. No 17(vii) of notification No. 11/2017-CT(Rate) dated 28.6.17 as amended refers].
5.	<p>Is GST leviable in following cases:</p> <p>(1) Hospital hires senior doctors/consultants / technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?</p>	<p>Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. [Sl. No. 74 of notification No. 12/2017-CT(Rate) dated 28.06.2017 as amended refers]</p> <p>(1) Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.</p>



S. No.	Issue	Clarification
	<p>(2) Retention money: Hospitals charge the patients, say, Rs.10000/- and pay to the consultants/ technicians only Rs.7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?</p> <p>(3) Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.</p>	<p>(2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India [Para 2(zg) of notification No. 12/2017- CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.</p> <p>(3) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.</p>
6.	Appropriate clarification may be issued regarding taxability of Cost Petroleum	As per the Production Sharing Contract (PSC) between the Government and the oil exploration & production contractors, in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost Petroleum". The relationship of the oil exploration and production contractors with the Government is not that of partners but that of licensor/ lessor and licensee/lessee in terms of the Petroleum and Natural Gas Rules, 1959. Having acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government. Para 8.1 of the Model Production Sharing Contract (MPSC) states that subject to the provisions of the PSC, the Contractor shall have exclusive right to carry out Petroleum Operations to recover costs and expenses as provided in this Contract. The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expense. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable per se. However, cost petroleum may be an indication of the value of mining or exploration services provided by operating member to the joint venture, in a situation where the operating member is found to be supplying service to the oil exploration and production joint venture.

[Circular No. 32/06/2018-GST dated 12th February 2018]

## CUSTOMS

### Refund of IGST on Export

The Central Government vide Circular No.05/2018-Customs dated 23rd February, 2018 has clarified the pre-requisites and precautions that need to be taken for successful processing of refund claims which are as follows:

1. Exporters have to file GSTR 3B with taxable value for export and IGST paid against exports indicated in appropriate fields.
2. Exporters have to file GSTR 1 or Table 6A for the exports made with correct details such as Invoice number, Taxable value, IGST paid, Shipping Bill number, Shipping Date and Port Code.
3. The aggregate IGST paid amount claimed in GSTR 1 or Table 6A should not be greater than the IGST paid amount indicated in Table 3.1(b) of GSTR 3B of the corresponding month. This check is put in the GSTN system to ensure that the refund claimed is not more than the IGST paid by the exporter
4. Exporters may be advised to use Table 9 of GSTR 1 of the following month to amend the records of previous month so as to take care of issues mentioned in paras 2 and 3 above. In cases where exporters have already filed information through Table 9 of GSTR 1, the said information is being validated by GSTN.
5. Exporters may be advised to track the refund status and errors pertaining to their shipping bills on the ICEGATE website. The registration process demo, advisory and the needed IT configurations are hosted on the ICEGATE website under the following links.

Registration Demo link:

[https://www.icegate.gov.in/Download/New\\_Registration\\_Demo\\_Updated\\_APPROVED.pdf](https://www.icegate.gov.in/Download/New_Registration_Demo_Updated_APPROVED.pdf)

Registration Advisory link:

[https://www.icegate.gov.in/Download/v1.2\\_Advisory\\_Registration\\_APPROVED.pdf](https://www.icegate.gov.in/Download/v1.2_Advisory_Registration_APPROVED.pdf)

Java set up for the DSC upload:

<https://www.icegate.gov.in/Download/JavaSetupForDSC.pdf>

6. Further, it has been decided to provide an alternative mechanism to give exporters an opportunity to rectify such errors committed in the initial stages. This envisages an officer interface on the Customs EDI System through which a Customs officer can verify the information furnished in GSTN and Customs EDI system and sanction refund in those cases where invoice details provided in GSTR 1/ Table 6A are correct though the said details provided in the shipping bill were at variance. It is pertinent to mention that refund claims would be processed only in those cases where the error code is mentioned as SB005. Further, it may also be noted that all refunds shall continue to be credited electronically through the PFMS system, and no manual payment / cheque will be issued. The procedure for processing of IGST refund claims in these cases would be as follows:



- a) The exporter shall provide a concordance table indicating mapping between GST invoices and corresponding Shipping Bill invoices, as annexed in support of the refund claim to the designated officer in the Custom house. A scanned copy of concordance table may also be sent to dedicated email address of Customs location from where exports took place.
  - b) Customs EDI system shall display list of all the invoices pertaining to such SBs vis-a-vis the invoice data received from GSTN. The officer shall verify the following:
    - i. Duly certified concordance table submitted by the exporter as per Annexure A indicating mapping between GST invoice and corresponding Shipping Bill invoice;
    - ii. IGST taxable value and IGST amount declared in the Shipping Bill.
    - iii. IGST details declared in the Shipping Bill should be in proportion to the goods actually exported.
  - c) After determining the correct refund amount, the officer need to enter the same into the Customs EDI system. The officer has the facility to edit the IGST paid details in case of short shipment or incorrect calculation by the exporter. The officer shall complete the verification by accepting or rejecting or amending the same.
  - d) Once all the invoices pertaining to Shipping Bill are verified by the officer, the system shall calculate the scroll amount against a shipping bill, after subtracting the drawback amount for each invoice where applicable, and display the refund amount to the officer for approval.
  - e) Invoices in any particular GSTR 1 where refund is sanctioned shall be disabled in the system to prevent refund against same invoice in future.
  - f) Once refund is sanctioned by the officer, the shipping bills would be available for generating scroll as per normal process.
  - g) In order to ensure smooth operation of the prescribed procedure, Custom Houses may open a dedicated cell and e-mail address for the purpose of IGST refund
- \*This procedure is available only for Shipping Bills filed till 31st December 2017.

[Circular No.05/2018-Customs dated 23rd February, 2018]



# ISSUES IN GST ON BANKING SECTOR

## Introduction:

The banking industry has come up with many ways of doing business where the transaction trails are very difficult to identify even for the banking employees. Banking transactions are routed through CBS (Core Banking System) where debits and credits of lakhs of transactions happen on real time basis. Banks deal with number of diversified partners right from the Government to the individual citizens. Further, the accounts are maintained at home branch whereas the services can be received by the customer at any other branch located anywhere in the world which is called as 'transacting branch'.

The GST impact needs to be analysed at each level of operations like cheque / Drafts/ cards/ issue process, ATM operations, credit wing, securities, letter of credit, net banking, cash backs and reward points, loans and advances, deposits, point of sale transactions, etc. This article lays down various issues that a banking sector may face in the GST regime. Various aspects discussed herewith would apply to all types of banks viz., Nationalised Banks, Private Banks, Public Banks, Co-operative Banks etc.

The major challenge for each bank would be to identify and understand its own nature of supplies, the transaction flow and then the situs and timing of taxation for each such supply, the valuation in absence of consideration and majorly identification of the location from where the service is rendered.

## 1) Rate of tax and valuation in case of repossessed assets:

When a bank re-possesses assets from a defaulter of loan & sales them, VAT is paid by the bank as a 'dealer' under state VAT laws in some States. The litigation continues as to whether, the bank effects the sale of such assets or facilitates/ compels the sale of assets by the defaulting borrower or as the case may be, Bank has acted as an agent of the defaulting borrower to sale/dispose off the asset. Such sales are effected to realise the bad/sticky loans of such banks. In GST Law, if Banks are treated as suppliers of such assets, the recovery amount shall be reduced by GST amount, , as it is expected that the rate of GST would be higher than the present VAT rate. In case banks would take possession and control over under-constructed buildings if there is lapse in payment of instalments, in such a scenario building would be sold before the receipt of completion certificate or first occupancy. A suitable clarity has to be provided whether in this situation GST would be applicable

or whether it will not be treated as supply by virtue of clause 5 of schedule 3 and not be taxable under GST since it is sale of immovable property.

One welcome measure is Valuation mechanism for repossessed assets from un-registered person is prescribed under proviso to sub rule 5 to rule 32 of GST rules. The purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

## 2) Reverse Charge on renting of immovable property under GST

Under Service tax regime banking company used to pay Service tax under Reverse Charge on advocate & Goods Transport services and others as given below:

- a) Services provided by way of sponsorship to any body corporate or partnership firm
- b) Services supplied by a director of a company
- c) Services supplied by a recovery agent to a banking company
- d) Supply of services by an author, music composer, photographer, artist

The above continues in the GST regime. Further, in GST law by notification no 03/2018 Central tax (Rate) dated 25th January 2018 has increased the scope of RCM to cover the Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a registered person.



Increase in list of services under reverse charge increases compliance burden on the banks. Further, in case of default by mistake, it shall increase costs in terms of interest and penalty.

### 3) GST on Import of Services

Notification no 10/2017 Integrated Tax (Rate) dated 28th June 2017 u/s 5(3) of IGST Act, requires payment under RCM for:

- i) Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.

Thus, the import of services will fall under this category as supply of any service where the supplier is located outside India and the recipient is located in India, the place of supply of service will be in India.

It may be noted that, Import of services by an Indian branch from their overseas branch, in the course or furtherance of business, even if without consideration, will be a supply due to provision contained in Schedule I of the CGST Act, 2017.

### 4) Implication of GST on Merchant Discount Rate (MDR) Transactions

In Case of MDR transaction, bank's customer would visit a merchant store say a Mobile shop where he swipes his credit card of Bank 'X' in a Point of Sale (PoS) machine of Bank 'Y' used by the Mobile shop for Rs. 10,000/-. On real time basis, Bank Y's portal would send the info to National Payments Corporation of India (NPCI) and in turn NPCI checks with Bank 'X's portal for the availability of funds. If yes, the transaction would be successful. In this case, merchant is charged a fee of Rs.150/- out of which Bank 'X's share would be Rs.30/- for which this bank will debit the customer account by Rs. 10,000/- and transfer's Rs.9,970/- to NPCI and NPCI would in turn pass on the amount to Bank Y. Further Bank Y would credit the merchant's account by Rs. 9,850/- after deducting its charges of Rs.120/-. All the settlement happens through statement generated by NPCI and nowhere bills/invoices have been raised on any party.

Now, there are following three ways of looking at the transaction for discharging GST:

- a) Bank Y discharges GST on Rs.150/- and Bank Y charges nothing as GST has been already paid by Bank X on full value. Rs.30 is considered as share of revenue.
- b) Bank Y pays GST on Rs.120 and Bank X discharges liability on Rs.30 considering their respective income.
- c) Bank X raises bill on Bank Y for Rs.30 with GST. Then

Bank Y avails the credit of the same and discharges GST on Rs.150/-. However, Bank Y may not be able to avail full ITC as it needs to reverse 50% of its credit as per Sec 17.

The second option would be ideal as the settlement been made on net basis and the parties shall discharge their liability on the respective income earned by them.

### 5) Implication of export realisation from foreign banks by Indian bank on behalf of its customers

Let us understand this transaction that the Indian bank has a customer named ABC Ltd who has exported goods to XYZ Ltd in Singapore worth USD 10 Lakh. ABC Ltd has asked Indian bank to do the necessary arrangement to get the Forex realisation. The XYZ Ltd on the other hand has account at Deutsche Bank in Singapore which transfers the amount to Citi Bank, New York after deducting its charge of USD 100. The Citi Bank, NY transfers the amount to City Bank India after deducting its charge of USD100 and then the Citi India would remit the amount to Indian Bank after deducting its charges of USD 50.

In the entire process, total 250 USD has been reduced from the realisation receivable by ABC Ltd and such charges are ultimately borne by ABC Ltd itself as per the terms of agreement.

In the instant case, if the terms of contract with customer XYZ Ltd provides for arrangement of 'Pure agent' of that customer, then the services received from foreign banks could be liable in the hands of customer ABC Ltd and not on account of Indian Bank. However, if the ABC Ltd and Indian bank has agreed to work on principal to principal basis where Indian bank does not merely get the reimbursement of the foreign bank's charges but charges a lump-sum to ABC which is over and above the actual charges paid to foreign banks, then the liability could be on the Indian bank as an importer of service under reverse charge mechanism qua the bank charges of foreign banks. The liability can be decided on case to case basis based on the terms of arrangement and the bank's role in the entire process.

### 6) Tax Invoice by Banking Company

Rule 47 of Central Tax provides time limit for issued of tax invoice, this rule has given relaxation to banking company, which can issue "Tax Invoice with period of 45 days" from date of supply of services instead of "30 days". Further Rule 54(2), provides further relaxation to Banking Company by providing an option to issue consolidated tax invoice or any other document in lieu of Tax Invoice at the end of the month for the supply of services made during a month.

Rule no 55 of Central Tax has also provide relaxation to banking companies, accordingly, instead ISD Invoice, banks can issue any document as ISD invoice and same may not be serially numbered. , thus it can be tax distribution advice.

Notification no 45/2017 & 55/2017 Central Tax, dated 13th Oct 2017 and 15th Nov 2017 respectively, has further amended Rule (1A) of 55 to provide that transfer of ITC to ISD by branch in same state can be through monthly consolidated invoice issued at the end of the month.

#### 7) Situs of transaction in case of banking services:

Under GST Law the place of supply of services for banking and other financial services (BOFS) shall be the location of the recipient of services on the records of the supplier of services. Provided that if, the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

However, what constitutes the 'records of the supplier' is not defined in the law leading to multiple interpretations as to whether it is to be understood as accounting records or customer records, vendor records and so on. Further, in some cases banks would have multiple addresses of the same customer in its records, this is possible as in case of a banking sector a customer would add multiple accounts within the same customer id and in which case only one address of the customer under whose address that customer id is registered would be reflected as the address on records.

However it is possible that the transaction is undertaken with the account holder within the same customer id but having a branch in different state. In such a situation, if strictly banks pay GST to the state based on the "address on record" then it may end up paying GST in a wrong state. Therefore, banks have to record the address of each account holders within the same customer id and GST needs to be charged on that account holder and accordingly tax also must be paid to that respective state government of the account holder and not the single address captured for the entire customer id. E.g. it is quite possible that bank issues 'bank guarantee' to be submitted to a local authority by a company. Now, if as per the bank's records, address of the customer [as its HO] is mentioned/ maintained where such address is in the other state, wrong GST may get levied.

In this background, as which tax is applicable is based on Place of Supply, it is suggested to clarify in case of Banking Industry, which address should be considered i.e. Permanent Address / Correspondence Address / Head Office / Branch Office, etc as to determination of place of supply.

#### 8) Inter-state supplies of goods or services (or both) between two branches of the same bank:

Unlike Service tax regime, transactions between Head-office and branches of different states are now taxable and transactions between the branches of same state are non-GST supply, which need to be accounted and reported under GST regime.

Inter-state supplies of goods or services (or both) between two branches of the same bank, located in two States, will attract IGST. Generally, in case of banks, purchasing of services are on centralised basis such as CBS Software, security software, AMC contracts for Computer Systems, ATM Machines, in such situation, there will accumulation of huge Input tax credit (ITC) of GST at head-office level, which needs distribution to each branches.

This distribution can be achieved either through obtaining "Input Service Distribution (ISD)" registration and thereafter distributing the accumulated ITC to other locations in proportion to their turnover

or

through raising the invoice for business support services by applying IGST on appropriate value.

Although, relief is provided in the valuation rules that in case of a transaction with distinct persons, value disclosed on the invoice shall be deemed to be taken as an open market value, however still valuation issues may creep as this rule does not apply if the receiving branch is not able to avail the full credit due to any reason whatsoever.

#### 9) Reversal of proportionate Input Tax credit:

As per the provisions of the Service Tax Act, option has been given to bankers to reverse 50% of the CENVAT credit instead of reversing based on the input service partly attributable to the taxable supply and exempted supplies. Similar provision is also in place under GST law.

Section 17(4) CGST Act gives option for availing 50% of eligible ITC on monthly basis, thus taking it at par with service tax regime. Only change is with respect to supply transactions between branches/ head office, in such cases total credit is available.

In earlier regime, VAT/Excise paid on various procurement like stationary, maintenance items, etc were not eligible for the credit, now on common purchases bank will be eligible to avail 50% credit, thus again there is increase in overall available pull of eligible credit. This shall reduce cost of Banking Company.

In Service tax regime, as per Rule 6(3B) of CENVAT Credit



Rules, 2004, an assessee in banking sector has to reverse 50% of the CENVAT Credit taken on monthly basis on inputs and input services. However, banks can take full credit on Capital goods unless the said capital goods are exclusively used for any exempted service.

However, section 17(4) of the GST law states that banks engaged in supplying services by way of accepting deposits, extending loans or advances have to reverse 50% of the eligible input tax credit on inputs, capital goods and input services.

However, in earlier regime banking companies were not able to claim VAT/Excise duty on purchases of goods, GST has provide the relief since all indirect taxes has been merged under GST, such credit is getting automatically available and thereby overall pull of eligible ITC will get increased.

#### 10) Taxability of Interest:

Under Service tax regime, interest income and discount provided by the banks are covered under negative list, hence not taxable to service tax. Under GST, the term 'service' is defined in a wide manner to cover 'anything other than goods' which may cover interest as well.

However, Notification no 12/2017 Central Tax (Rate) dated 28th June 2017 has exempted services by way of—

- a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);
- b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

Thus the exemption as provided in Service tax regime is continued in GST Law.

#### 11) Multiple registration requirement:

Under earlier regime, generally banks were register under centralized registrations scheme of Service Tax laws for all its branches. With the migration into GST, banking sector has under gone cumbersome activity of multiple states registration as operations of banks are spread across multiple states & union territory.

With this, banking sector is facing huge compliance burden, which requires, high level coordination and controls for compliance with GST Law. As compared to Service tax regime the compliance periodicity has been come down from 6 months to monthly basis and has become separate activity itself.

After introduction of GST, accounting, administration and financial records frame need overall re-engineering of process as banks are, now required to maintain records for each state-wise separately to meet the requirement of filing of multiple state-wise returns and facing multiple audits and assessments.

#### 12) Sales of Third Party Product:

Currently, in addition to banking operation, banking companies are also engaged into sale/ supply of third party products mainly mutual fund agency services and insurance agency services. Out of these services Insurance agency services are covered under reverse charge mechanism as notified vide notification no 13/2017 Central Tax (Rate) dated 28th June 2017. However, banks will have to disclose such business in GSTR3B and GSTR-1 return.

In case of income from mutual fund agency business, it will form outward supply services and bank will have to raise the invoice on Fund house by charging GST @ 18%.

#### Conclusion:

On overall basis, banking sector has been burdened with following due to implementation of GST Law:-

- i) Voluminous compliance due to change in frequency of periodical returns and multiple registration requirement.
- ii) Suitable & relevant maintenance of Books of Accounts, as GST requires state-wise consolidation of outward supply, ITC to be reported in GSTR return. Further in addition to reporting of taxable supply, a bank also has to maintain records of non-GST supply.
- iii) Reversal of ITC on Capital Goods.
- iv) Payment and availment under Reverse Charge mechanism.
- v) Additional requirement of documents and information to implement and maintain the records to cope up with requirements of law.

However, banking sector has also gained on account of increase in overall pull of ITC, due to availment of credit on Goods used for common services which includes items like stationary, maintenance equipments and spares, import of machineries ,etc, this will certainly have positive impact on profitability of banking sector.

Traditionally banking sector's focus was towards maintenance of records related to banking Operation and Customer operations, however, now banking sector needs equal amount of focus on maintenance of tax accounting records so as to keep the audit trail and meet the GST obligations correctly.

*Contributed by Pune Study Group*

# PAYMENTS UNDER GST

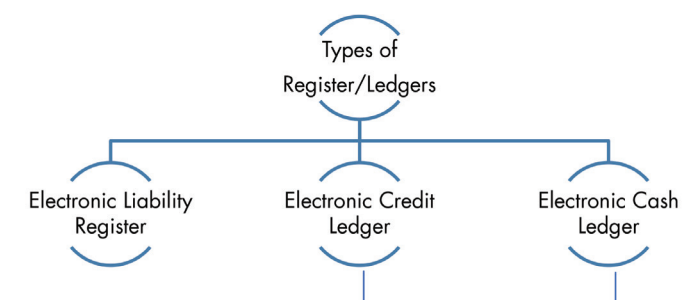
## Introduction

As we are aware it is endeavor of the Government to make all law simple and with this payment of tax is also made easy.

Section 49 of CGST Act, 2017 deals with payment of tax, interest, penalty and other amounts. A quick glance at the provisions related to payment read with the Payment of Tax Rules 85 to 88 of CGST Rules, 2017 clearly depicts the Government's intent to focus primarily on e-payments for the liabilities arising under GST rather than over the counter payments. Simultaneously, for the small assessee, over the counter payment by cash/cheque/DD is permissible up to the limit of Rs. 10,000/- per challan per tax period. Payments under GST can be made either through electronic cash ledger or through electronic credit ledger as per the provisions of section 49 of CGST Act, 2017 and Rules framed there under.

This article deals with payment provisions under GST.

## I. Recording and maintenance of register/ledgers on the common portal:-



Where any payment is made through electronic cash of credit ledger or where any other amount is debited or credited in the said ledgers, a Unique Identification Number (UIN) shall be generated. The said number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic liability register.

### A. Electronic Liability Register: -

In terms of provisions of section 49(7) of the CGST Act, 2017 read with Rule 85 of Payment of Tax Rules, all liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register to be maintained in **Form GST PMT-01**.

This register will be maintained separately in two parts for Central Tax, State/UT Tax, Integrated Tax and Cess:

Part-I: will show return related liabilities

Part-II: will show other than return related liabilities.

Significant notable points are: -

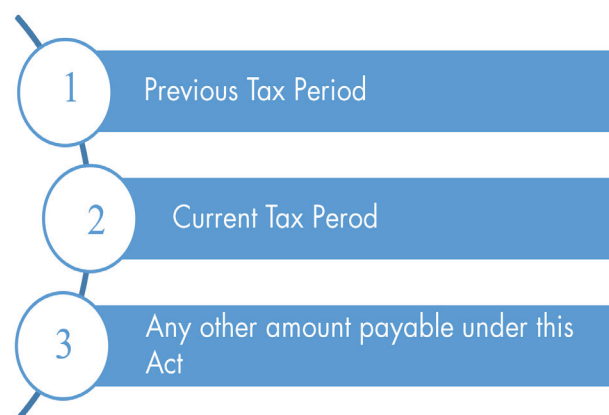
1. All amounts payable shall be debited to this register and bifurcated as:
  - Return related
  - Other than return related

## 2. Debit to this register will be for: -

Part I- Return related	Part II- Other than return related
Tax, Interest, fees or other amount payable, including liabilities due to- <ul style="list-style-type: none"> <li>• Opt in for Composition or</li> <li>• Cancellation of registration</li> </ul>	All liabilities other than return related- <ul style="list-style-type: none"> <li>• Reduction or enhancement due to decision of Appeal, rectification, revision, review, etc.</li> <li>• Refund of pre-deposit</li> <li>• Payments made against SCN or any other voluntary payments</li> </ul>

3. Credit to this register will be done by debiting electronic cash or credit ledger.
4. Sequence of discharging tax and other dues:
  - i. Previous tax period
  - ii. Current tax period
  - iii. Any other amount payable under this Act including demand determined under section 73 or section 74

### Chart showing chronological order of discharge of tax and other dues - Electronic Liability Register



It is pertinent to note that if any liability is payable under Part II then it will not have any effect on return filing. But if tax is payable under Part I then return will be treated as invalid

### B. Electronic Credit Ledger: -

In terms of provisions of section 49(2) of the CGST Act, 2017 read with Rule 86 of Payment of Tax Rules, the Input Tax Credit (ITC) as self-assessed in the return of a registered person shall be credited to his electronic credit ledger to be maintained in Form GST PMT-02.

Significant notable points are: -

**1. Debit/Credit to this ledger:**

Entries credited	Entries debited
Self-assessed ITC in GSTR-3B return	Utilization towards output tax shown in GSTR-3B return
ITC on account of merger	Utilization towards liability related to demand
Transitional credit	Refund claimed
Credit on account of pre-registration inputs	
Credit on opt out from composition scheme	

**2. Sequence and restriction for the utilization of Input Tax Credit:-**

Input Tax Credit	Can be utilized against	Order of utilization
CGST	CGST & IGST	1. CGST 2. IGST
SGST	SGST & IGST	1. SGST 2. IGST
UTGST	UTGST & IGST	1. UTGST 2. IGST
IGST	IGST, CGST, SGST/ UTGST	1. IGST 2. CGST 3. SGST/UTGST

Note: Cross utilization of SGST/ UTGST&CGST is not permissible

**C. Electronic Cash Ledger**

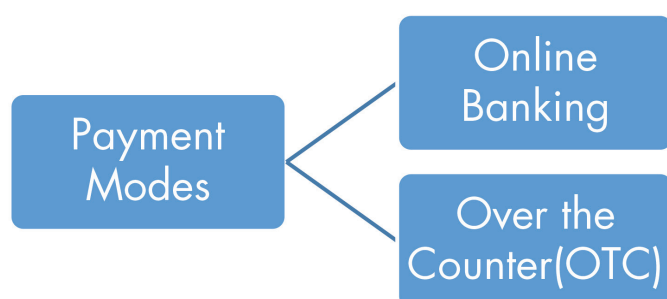
In terms of provisions of section 49(1) of the CGST Act, 2017 read with Rule 87 of Payment of Tax Rules, every deposit made towards tax, interest, penalty, fee or any other amount by a person shall be credited to the electronic cash ledger to be maintained in Form GST PMT-05.

Significant notable points are :-

**1. Payment sources:**

Payment can be made through following two modes :-

- Online banking;
- Over the counter (OTC)

**I. Online banking:-**

Payment of GST by taxpayer can be made through four online modes :-

- Internet banking
- Debit card/Credit card
- National Electronic Fund Transfer (NEFT)
- Real Time Gross Settlement (RTGS)

**ii. Over The Counter (OTC):-**

OTC up to Rs. 10,000/- is permitted per challan per tax period by cash/cheque/DD.

**2. Payment procedure:**

- Challan to be generated in FORM GST PMT-06 for the tax, interest, etc. to be deposited (Valid for 15 days).
- Payment by non-registered person shall be made on the basis of temporary identification number.
- Mandate form (Applicable in case of NEFT and RTGS):

Where the payment is made by way of NEFT or RTGS mode, the mandate form shall be generated along with the challan on the Common Portal and the same shall be submitted to the bank from where the payment is to be made (The said mandate form will be valid for 15 days from the date of generation of challan).

- On successful payment, a Challan Identification Number (CIN) will be generated and the same shall be indicated in the challan. On receipt of CIN from the authorized bank, the said amount shall be credited to the electronic cash ledger. But if CIN is not generated or not communicated, person may represent in FORM GST PMT-07, an application for intimating discrepancy relating to payment to bank/electronic gateway.

**3. Debit/credit entries in Electronic cash ledger in Form GST PMT-05**

Following transactions shall have an effect on the electronic cash ledger and shall be debited/ credited accordingly :-

- Self-payment shall be credited to the ledger;
- TDS or TCS to be credited to electronic cash ledger of the person from whom the amount was deducted or collected;
- Payment towards tax, interest, penalty, fee or any other amount shall be debited to the ledger.
- Balance in Electronic cash ledger after payment of tax and other dues can be claimed as refund. Amount claimed as refund to be debited to the ledger. If refund is rejected, ledger to be re-credited by proper officer by order in Form GST PMT-03;

Note: TDS, TCS, tax under reverse charge and tax in case of composition levy can be made by debiting electronic cash ledger only.

**II. PMT-04: Discrepancy in Electronic credit/cash ledger and liability register:**

A registered person shall upon noticing any discrepancy in his electronic credit/cash ledger and liability register communicate the same to the Jurisdiction office through common portal in Form GST PMT-04 alongwith the reason if any thereof.



**III. Interest on delayed payment of tax (Section 50)**

Where payment under GST is not made within the prescribed time, registered taxable person shall pay interest for such delay as under:-

Case	Situation	Rate of Interest
Case-I	For delayed payment of tax	Maximum rate is 18%
Case-II	For excess claim of ITC/excess reduction in output tax liability	Maximum rate is 24%

**IV. Tax deduction at source (Section 51) [Suspended till 31st March, 2018]**

These provisions are applicable for tax deduction when goods/services are supplied to Department or establishment of CG or SG, local authority or Govt. agencies or category of persons notified by Government. vide Notification No. 33/ 2017-Central Tax dated 15-Sep-2017, Government has notified following persons to be liable to deduct tax –

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

Details are in the below table:-

Sr. No.	Particulars	Description
1.	Deductor	Department or establishment of CG or SG, local authority or Govt. agencies or category of persons notified by the Govt.
2.	Deductee	Supplier of taxable goods/services
3.	Rate	1% of the payment made
4.	Limit	Total value of supply (excluding GST) under contract exceed Rs. 2,50,000/-
5.	No TDS	If the state/UT of location of the supplier and place of supply is different from the state/UT of registration of recipient
6.	Payment of TDS	10th of the next month
7.	Certificate	Deductor shall furnish certificate with details of contract value, rate of deduction, amount deducted, etc.

Sr. No.	Particulars	Description
8.	Penalty for non-furnishing	Penalty on Deductor of Rs. 100/- per day, subject to maximum of Rs. 5,000/-, if certificate is not furnished within 5 days of TDS payment to Govt.
9.	Effect in cash ledger	TDS to be credited to electronic cash ledger of the person from whom the amount was deducted after the same is reflected in the return of Deductor
10.	Applicability of other provisions	Section 50(interest), section 54(refund) and Section 73/74 (SCN) equivalently applicable

**IV. Collection of tax at source (Section 52) [Suspended till 31st March, 2018]**

These provisions are applicable when supplies are made through an electronic commerce operator. Details are in the below table:-

Sr. No.	Particulars	Description
1.	Tax to be collected by	Electronic commerce operator (operator)
2.	Tax to be collected from	Supplier supplying through operator
3.	Rate	Up to 1% of net taxable supplies made through it where consideration is to be collected by the operator
4.	Net taxable value	Net taxable value means aggregate value of taxable supplies other than services notified under section 9(5) and reduced by aggregate value of supplies returned to the suppliers
5.	Payment of TCS	10th of the next month
6.	Statement by operator	10th of the next month – containing details of supplies made through it, supplies returned, tax collected. Any error may be rectified in the statement of the month in which it is noticed, but up to earlier of due date for the month of September following the end of F.Y. or annual statement's actual date

Sr. No.	Particulars	Description
7.	Annual statement	31st December of next F.Y.
8.	Effect in cash ledger	TCS to be credited to electronic cash ledger of the person from whom the amount was collected after the same is reflected in the statement of operator
9.	Matching	Details by operator shall be matched with the details by supplier. Discrepancy shall be communicated to both
10.	Mismatching effect	Outward supply as per operator > outward supply as per supplier, and if discrepancy is not corrected, same shall be added to the output liability of supplier. Tax along with interest to be paid

Sr. No.	Particulars	Description
11.	Furnishing details	Deputy Commissioner or above rank may ask operator to furnish details of supplies and stock within 15 days. Otherwise, penalty up to Rs. 25,000/-

#### V. Summary of Forms under Payment provisions

Sr. No.	Particulars	Form No.
1.	Electronic Liability Register	GST PMT-01
2.	Electronic Credit Ledger	GST PMT-02
3.	Electronic Credit or Cash Ledger to be re-credited by proper officer by order if refund is rejected	GST PMT-03
4.	Communication of discrepancy in Electronic Credit Ledger/ Cash Ledger/ Liability Register	GST PMT-04
5.	Electronic Cash Ledger	GST PMT-05
6.	Challan for deposit of GST	GST PMT-06
7.	Representation if CIN is not generated or communicated	GST PMT-07

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Main features of the E-learning on GST are:

- ❖ Video recordings by renowned faculties covering 15 topics of GST
- ❖ For each topic, recorded time of Video lecture ranges from 160-250 minutes. Total time of entire E-learning on GST is approx. 49 hrs.

❖ Available at price:

S. No.	Individual topic/ Complete course	For Members	For Non-Members
1	Individual topic	₹100+ applicable taxes	₹200+ applicable taxes
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❖ Interested person may visit at the link <http://idtc.icaai.org/elearning-gst-subscribe.html> on the website of the Indirect Taxes Committee.

These videos were recorded from 15<sup>th</sup> Dec, 2017 to 14<sup>th</sup> Jan, 2018. The video lectures can be viewed over a period of two months in online mode only. Members who have subscribed for live webcast series are not required to subscribe this e-learning.

For any clarifications, you may refer “FAQs on E-Learning on GST” available at <http://idtc-icaai.s3.amazonaws.com/download/FAQs-on-E-Learning-GST.pdf> or contact Secretariat, Indirect Taxes Committee may be contacted at [gst@icaai.in](mailto:gst@icaai.in) or 0120-3045954.

# ADVANCE RULING UNDER GST

The World of Business is based on informed **decisions**. Decisions which make or break an organisation. A right estimation may lead it to scale new heights, and on the other hand, a wrong cost projections may lead to complete wipeout of the business.

## Ambiguities in Law

Any Law, no matter how beautifully drafted, is **incapable** to deal with every single transaction happening in its jurisdiction. The same could be the case with GST Law in India. As a result, there may remain ambiguities in the minds of dealers as to:

- ❖ What tax rate to charge on their product?
- ❖ How and Where should his goods be **classified**?
- ❖ Whether any given notification is **applicable** to him?
- ❖ How to determine the **time and value** of supply of goods or services or both?
- ❖ Whether input tax credit of tax paid or deemed to have been paid, is **admissible**?
- ❖ How to **determine** the liability to pay tax on any goods or services or both?
- ❖ Whether he is **required** to be registered?
- ❖ Whether any particular thing done by him with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term?

To ward off against such situations and problems the concept of **Advance Ruling** has been laid under Chapter XVII of the Central Goods and Service Tax Act, 2017 [parallel provisions are there in the State Goods & Services Tax Laws]. This chapter covers a total of 12 sections ranging from section 95 to section 106.

**Advance ruling** is defined under Section 95(a) as a **decision** provided by the Authority or the Appellate Authority to an applicant on matters or on questions in relation to the supply of goods and/or services being undertaken or proposed to be undertaken by the applicant. Thus, the purpose of forming an authority for advance ruling is **to provide clarity** on many unanswered questions of law which arise due to various anomalies in law. It also helps business and investors to work out the tax component on their future proposed project before any major investment is made. As it helps the public by providing clarity of law, the resultant is lower litigations by revenue authority as decisions of Advance Ruling Authority are **binding** on them and the applicant also.

## Constitution of Authority:

The constitution of **Advance Ruling Authority** has been specified under section 96(2) of the Central Goods and Services Tax Act, 2017. It would consist of one member from amongst



the officers of the Central Tax and one member from amongst the officers of the State Tax which shall be appointed by the Central and State Governments respectively.

The **Appellate Authority** on the other hand has been specified under section 99(2) of the Central Goods and Services Tax Act, 2017. It would consist of the Chief Commissioner of Central Tax as designated by the Board; and the Commissioner of State Tax having jurisdiction over the applicant.

## Questions that may be raised

Section 97(2) specifies the categories of questions which can be asked from the Authority for Advance Ruling by making an application in the form and manner prescribed, along with the prescribed fee for the questions that may be asked from it. These questions have been specified above.

Under the ideal situation these questions should have been answered in law itself for every business and every situation. But how is it possible to imagine all possible situations while drafting the law. So there remain numerous deficiencies which result in litigations. Thus, Advance ruling acts as a law clarifying authority. And a well directed and properly drafted question asked from authority for advance ruling may save number of years of litigation with the GST Department.

## How to Apply for Advance Ruling?

Rule 104 of CGST Rules prescribes the Form and manner of making application to the Authority for Advance Ruling. An application for obtaining an advance ruling under Section 97(1) shall be made on the common portal in FORM GST ARA-01 and shall be accompanied by a fee of 5000 rupees, to be deposited in the manner specified in section 49 and signed in the manner specified in rule 26.

## Manual filing and processing: -

As the GST common portal could not be made functional to accept applications online for obtaining Advance Ruling, a new rule 107A inserted, and Circular No. 25/25/2017-GST was issued



to allow Manual filing and processing for the same. So now for the time being an application for obtaining advance ruling can be made manually, in quadruplicate, in FORM GST ARA-01. The application shall be accompanied by a fee of five thousand rupees which is to be deposited online by the applicant, in the manner specified under section 49 of the CGST Act.

It is reiterated that though the application shall be filed manually till the advance ruling module is made available on the common portal, the fee is required to be deposited online in terms of section 49 of the CGST Act. In order to make the payment of fee for filing an application for Advance Ruling on the common portal, the applicant has to fill his details using "Generate User ID for Advance Ruling" under "User Services". After entering the email id and mobile number, a One-Time Password (OTP) shall be sent to the email id. Upon submission of OTP, the System shall generate a temporary ID and send it to the declared email and mobile number of the applicant. On the basis of this ID, the applicant can make the payment of the fee of Rs. 5,000/- each under the CGST and the respective SGST Act. The applicant is then required to download and take a print of the challan and file the application with the Authority for Advance Ruling.

#### Procedure of Advance Ruling Authority: -

Section 98 provides for the procedure to be adopted by the advance ruling authority on receipt of an application seeking advances ruling. On receipt of such application the authority shall **send a copy** of it to the officer concerned and call upon him to furnish the relevant records. The authority then will **examine the application** and such records and **hear the applicant** and the concerned officer through their authorized representative or in person. An **order** will then be passed either **admitting or rejecting** the application. No such application shall be admitted, which has a question similar to any previously pending question or any matter **previously decided** in relation to the applicant, in any proceedings under any other provisions of the GST Act. If the authority wishes to **reject an application**, it can do so only after providing an **opportunity of being heard** to the applicant and also the order thus made should provide the **reason for rejections**. A copy of above order shall be sent to the applicant and concerned officer.

After the authority, has admitted the application, it shall examine any further material placed before it or obtained by it and provide an opportunity of being heard to the applicant or his A.R. as well as to the concerned officer. There after the authority shall **pronounce its advance ruling** on the question specified in the application. Time limit for disposal of application is 90 days of receipt of application.

A Certified and Signed copy of ruling shall be sent to -

- the applicant;
- the concerned officer and
- the jurisdictional officer.

#### Difference of opinion amongst members

Where the members of the authority differ on any question, they shall mention the points(s) on which they differ and refer

to the appellate authority for hearing and decision thereon.

#### Appellate Authority for Advance Ruling (S.99 of CGST Act)

Any Appellate Authority constituted under any State or Union Territory GST Act shall be deemed to have jurisdiction over that State or UT only. The Appellate authority shall consist of

- (i) the Chief Commissioner of central tax as designated by the Board; and
- (ii) the Commissioner of State tax:

Provided that the Government may, on the recommendations of the Council, notify any Appellate Authority located in another State or Union territory to act as the Appellate Authority for the State.

#### Appeal to the appellate Authority (S.100)

An appeal against the advance ruling made u/s 98(4) may be filed within 30 days of receipt of ruling, by the aggrieved party.

This period may be extended by another 30 days if sufficient cause is disclosed by the appellant before the authority.

Time Limit	: 30 days of receipt of appeal
Condonation of delay	: Upto 30 days, if sufficient cause shown.
Fee	: Rs.10000
Who can prefer appeal	: Applicant, Concerned officer, Jurisdictional officer.

#### Orders of Appellate Authority (Section 101)

An appellate authority shall pass such order as it may deem fit either **confirming or modifying** the ruling of the advance ruling authority made u/s 98(6) or reference u/s 98(5). Such order shall however be passed only after giving the parties to the appeal or reference an opportunity of being heard.

No order can be passed if members of the appellate authority **differ** on any point referred to in an appeal or reference. In such a case a **deadlock** situation may arise and the applicant may feel that his time has been wasted. However, such situations shall be useful for government to draft or amend the provision of law in such a manner so as to take care of ambiguities in law avoiding such deadlock scenarios.

After the appellate authority has admitted the application, it may examine any further material placed before it or obtained by it and provide an opportunity of being heard to the applicant or his authorized representative as well as to the concerned officer. Thereafter the authority shall pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

A Certified and Signed copy of the advance ruling so pronounced shall be sent to

- the applicant;
- the concerned officer;
- the jurisdictional officer; and
- the Authority.

**Rectification** of advance ruling (S.102) can be made by the authority u/s 98 and by the appellate authority u/s 101 of any mistake apparent from record within a period of 6 months from the date of the order. However proper opportunity of being heard is to be provided to the applicant if such rectification would result in enhancing the tax liability or reducing the input tax credit.

Advance ruling shall be **Binding on**

- (1) The applicant
- (2) The concerned officer or jurisdictional officer.

And it shall be binding upto the time the law facts or circumstances remain the same. In case the applicant obtains an advance ruling, and before he applies the ruling for his business, if the facts change like say the raw material which was earlier imported is now sourced from India itself, then on the basis of such changes, the jurisdictional officer may refuse to accept the ruling citing change in facts of the case.

If the authority or the appellate authority finds that the applicant has obtained the advance ruling by **fraud** or suppression of material facts or mis-representation of facts, it

may pass an order declaring such ruling as **void ab initio** i.e. it shall be deemed to never have been made. This order shall be passed only after providing an opportunity of being heard to the applicant.

And for making any recoveries u/s 73 or 74 the period between date of such advance ruling and date of order shall be excluded.

**Powers:** Authority or Appellate Authority shall have all the powers of civil court under the Code of Civil Procedure, 1908 regarding discovery and inspection, enforcing the attendance of any person and examining him on oath or for issuing commissions and compelling production of books of account and other records.

**Similar provisions:** Taxation laws have traditionally provided provisions of advance ruling for the benefit of public, to facilitate foreign investment into the country and to safeguard against harassment due to unclear Law. Some statutes however call these provisions as determination or clarification. Given below is a comparison chart of similar provisions of advance ruling under old laws with that under GST laws.

Comparison Chart of Advance Ruling Provisions of various tax Laws:

	Income Tax	Excise, Customs, Service Tax	DVAT	GST
Acts	Income-tax Act, 1961	Customs Act, 1962	Dvat Act, 2004	Central GST Act, 2017
Sections	245N (a)	Sec. 28F	Section 84 & 85	Sec. 95 to 106
Fees	Rs. 10,000 to Rs. 10 Lakhs	Rs. 2,500	NA	Rs. 5,000
Disposal time	6 months	90 days	As Prescribed in 84(5)	90 days
Form	Form 34C/D/DA/E/EA	Excise: AAR CE-1 Customs: AAR CUS-1 Service Tax: AAR ST-1	DVAT-42	FORMS ARA-1, ARA-2, ARA-3
Questions that may be asked	questions of law or fact pertaining to the income tax liability of the non-resident, clarification for double tax avoidance agreements	Classification, valuation, Applicability of notifications, Admissibility of input-tax credit, Determination of the tax liability,	whether any person would be a dealer/ required to be registered? a transaction is or would be a sale/ works contract? a sale is/not liable to tax or is exempt? determination of tax credit, import of goods, value of any goods imported into Delhi? determination of taxable turnover/ sale price/tax rate? the location of any sale or purchase? Application of a composition scheme?	Determination of tax rate/ time and value of supply, classification/ applicability of notifications/ admissibility of Input tax credit/requirement for registration

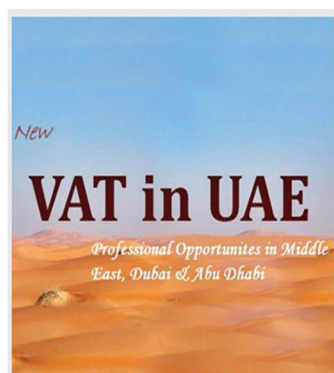
Authority	Authority for Advance Ruling	Authority for Ad-vance Rulings, Central Excise, Customs & Service Tax	Commissioner	Authority for advance ruling
First Appellate Authority	ITAT	CESTAT	Tribunal	Appellate Authority for advance ruling
Ruling binding on	department and the applicant in relation to the said transaction	departmental assessing officer and the applicant	On the particular transaction	Applicant, Jurisdictional Officer and The Concerned Officer
Who can seek AR	Resident dealing with NR, NR, resi-dent undertaking transaction(s) more than Rs.100 cr., notified public sector co., other prescribed	Non-resident setting JV in India, Subsidiary of foreign co., Resident Company or Firm, other specified persons	Any person	Any person
Constitution	Independent Body headed by Ex-judge of SC and two members of the rank of Additional Secretary to the Government of India.	a retired SC Judge, a customs & Excise officer qualified as board Member, a Indian Legal Service officer qualified as Addl. Secretary to Indian Gov.	Commissioner of VAT	Minimum Joint Commissioner Lev-el (Rule 103) (3 Yr. experience)

**Conclusion:**

The concept of Advance Ruling as explained above should be beneficial for emerging and new businesses, where otherwise

due to the ironies of law or ambiguities in the law, it may land up taking a wrong decision/ wrong view, which may jeopardise the existence itself.

### E- Learning on UAE VAT through recorded video lectures for anytime, anywhere learning!



The Indirect Taxes Committee of ICAI has come up with E-learning on UAE VAT through recorded video sessions covering almost the entire topics of UAE VAT, which are available on its website viz. [www.idtc.icai.org](http://www.idtc.icai.org)

to provide the users a well-set platform for learning and gaining knowledge on VAT in UAE.

Main features of the E-learning on UAE VAT are:

- ❖ Video recordings by renowned faculties covering 14 topics of UAE VAT
- ❖ For each topic, recorded time of Video lecture is between 1.5 -2 hours approximately. Total time for complete course is approx. 21 hrs.

❖ Available at price:

S. No.	Individual topic/ Complete course	For Members / Non-Members
1	Individual topic	₹ 500/- (including applicable taxes)
2	Complete course	₹ 5,000/- (including applicable taxes)

Interested person may visit at the link <http://idtc.icai.org/vat-in-uae.html> on the website of the Indirect Taxes Committee.

These videos were recorded from 22<sup>nd</sup> Dec, 2017 to 30<sup>th</sup> Dec, 2017. The video lectures can be viewed over a period of two months in online mode only. Members who have subscribed for live webcast series are not required to subscribe this e-learning.

For any clarifications, you may refer “FAQs on E-Learning on UAE VAT” available at <http://idtc.icai.org/vat-in-uae.html> or contact Secretariat, Indirect Taxes Committee may be contacted at [idtc@icai.in](mailto:idtc@icai.in) or 0120-3045954.



## ICAI'S Contribution for smooth implementation of GST as partner in Nation Building

### 1. Post Budget Suggestions

The Indirect Taxes Committee of ICAI recently submitted post budget suggestions in relation to Customs to the Government of India recommending certain amendments to the proposals contained in the Finance Bill, 2018.

### 2. Training Programme for Officer of Airforce Station

In addition to the earlier organized 4 training programmes, the Committee to organised further three (3) training programme for Officers of Airforce as follows:

Sl. No.	Date	City
1.	5th & 6th February, 2018	Delhi
2.	19th & 20th February, 2018	Delhi
3.	23rd & 24th February, 2018	Delhi

3. **Certificate Course on GST:** The Committee has started another batch of Certificate Course on GST as per the details below, making the total batches of the Course to 59 since 28th April, 2017 wherein 3595 members have been trained:

Sl. No.	City	Commencement Date	Completion Date	No. of participants
1.	Delhi	13th Jan, 2018	11th Feb, 2018	63

### 4. Assessment Test of Certificate Course on GST through electronic mode

Assessment Test of all the Certificate Courses on GST & Virtual Certificate Course on GST completed on or before 18th February, 2018 will be conducted by the Indirect Taxes Committee of ICAI on 17th March, 2018, Sunday from 11am to 1pm through Computer mode at specified centers. The test will be conducted in 37 locations across the Country.

5. **Suggestions on GST Law:** ICAI submitted its comprehensive suggestions on GST relating to policy, law and practical issues faced by the Assessee on 17th January, 2018 considering meeting of the GST Council was scheduled on 18th January, 2018
6. **E-Learning on GST:** Indirect Taxes Committee of ICAI launched E-learning on GST through recorded video sessions covering almost the entire topics of GST on 23rd Jan, 2018, wherein all the 15 videos recorded during live virtual classes have been made available at the subscription price of Rs. 100/- and Rs. 200/- plus taxes for members and non-members respectively. The complete package is available at discounted subscription price of Rs. 1,000/- and Rs. 1,500/- plus taxes for members and non-members respectively.

### 7. Recent GST Publications

Continuing with the motive of knowledge dissemination, the Indirect Taxes Committee of ICAI, has recently launched/ revised following publications: -

- a. Background Material on GST Acts and Rules- January 2018 Edition

(Two Volumes: Vol-1: Act & its analysis, Vol-02: Rules & Notifications)

The publication contains in-depth clause by clause analysis of the GST Acts and Rules made thereunder along with the corresponding FAQ's, MCQ's, Flowcharts and Illustrations etc. to make the reading and understanding easier.

- b. Background Material on Exempted Services under GST- January, 2018 Edition

The publication contains detailed discussion on all exemptions available for various services like health care, education etc. along with the examples and reference to the mega exemption notification under the earlier Service Tax regime has also been provided.

- c. FAQ's and MCQ's on GST - January 2018 Edition

This publication provides a comprehensive coverage of GST Law in question answer format as an easy and lucid manner along with illustrations, clarifications provided by authorities, few exemptions etc.

These publications can be downloaded at <http://idtc.icaai.org/publications.php> and can be ordered online at <https://icaai-cds.org/>

8. **Committee's immediate future initiatives:** The Committee is working to bring out/organise:

- Handbook on GST for Trader
- Guidance Note on Accounting Treatment of Goods and Services Tax
- Booklet on Exemptions under GST
- Booklet on Transitional provisions
- Short video on GST
- Guidance Note on Audit under GST

9. **Suggestions on GST Law:** ICAI submitted its comprehensive suggestions on GST relating to policy, law and practical issues faced by the Assessee on 17th January, 2018 considering meeting of the GST Council was scheduled on 18th January, 2018.

10. **Workshops, Seminars and Conferences:** More than 3700 workshops, seminars and conferences on GST have been organised across the country since January 2017 wherein more than 2.9 lakh members have participated.



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

The Indirect Taxes Committee of ICAI has launched its website viz. [www.idtc.icai.org](http://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 / GST Updates
- \* Knowledge Bank of Indirect Taxes/ GST – Articles, Legal Updates etc.
- \* Publications on Excise, Service Tax, VAT, GST etc.- (Available for free download and online ordering)
- \* Recordings of Live Webcasts / E-lectures on GST
- \* E-learning on Service Tax, Excise, Customs, CST
- \* Upcoming events
- \* Details of Certificate Courses, Programme, Seminars etc. on GST/ Indirect Taxes
- \* Links of related important website
- \* Connect with Indirect Taxes as a faculty / author of the publication etc.
- \* GST tab newly created on website to provide consolidated GST information.

Your suggestions on the website are also welcome at [idtc@icai.in](mailto:idtc@icai.in)

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