



# ICAI-GST

NEWSLETTER

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



# THE COUNCIL

## President

CA. Naveen N. D. Gupta

## Vice President

CA. Prafulla Chhajed

CA. Anil Satyanarayan Bhandari

CA. Atul Kumar Gupta

CA. Babu Abraham Kallivayalil

CA. Debashis Mitra

CA. Dhinal Ashwinbhai Shah

CA. Dhiraj Kumar Khandelwal

CA. G. Sekar

CA. Jay Ajit Chhaira

CA. K. Sri Priya

CA. Kemisha Soni

CA. M. Devaraja Reddy

CA. M. P. Vijay Kumar

CA. Madhukar Narayan Hiregange

CA. Mangesh Pandurang Kinare

CA. Manu Agrawal

CA. Mukesh Singh Kushwah

CA. Nandkishore Chidamber Hegde

CA. Nihar Niranjana Jambusaria

CA. Nilesh Shivji Vikamsey

CA. Prakash Sharma

CA. Rajesh Sharma

CA. Ranjeet Kumar Agarwal

CA. Sanjay Agarwal

CA. Sanjay Vasudeva

CA. Sanjiv Kumar Chaudhary

CA. Shiwaji Bhikaji Zaware

CA. Shyam Lal Agarwal

CA. Sushil Kumar Goyal

CA. Tarun Jamnadas Ghia

CA. Vijay Kumar Gupta

Shri K. V. R. Murty

Shri Sudhanshu Pandey

Shri Vithayathil Kurian

Dr. Ravi Gupta

Shri Sunil Kanoria

Shri Chandra Wadhwa

Dr. P. C. Jain

Shri Vijay Kumar Jhalani

# CONTENTS

## ➤ Update

1. GST updates 4-11

2. Customs 12

➤ Forth Coming Events under the Aegis of Indirect Taxes Committee 12, 16

➤ Publications 16

## ➤ Articles

1. Tax Deduction at Source (TDS) Under GST 13-16

2. E-Way Bill A Critical Analysis 17-22

➤ ICAI's Contribution in GST Implementation 23



idtc@icai.in

**Disclaimer :** The views and opinions expressed or implied in the ICAI-GST Newsletter are those of the authors and do not necessarily reflect those of ICAI. Material in the publication may not be reproduced, whether in part or in whole, without the consent of ICAI.



# President's Communication



*My Esteemed professional colleagues,*

Government has recently notified much awaited format of GST Annual Return FORM GSTR-9 which is required to be filed once in a year on or before 31st December after the financial year ending by the registered taxpayers including by those registered under composition scheme. Government has also notified the format of Reconciliation Statement in FORM GSTR - 9C: Part A- Reconciliation Statement and Part B-Certification by the Chartered Accountants, required to be submitted by a registered person. This form is to be submitted by assessee whose aggregate turnover exceeds Rs. 2 crores during the financial year.

Indirect taxes Committee of ICAI with a view to provide assistance in effectively executing responsibilities by ICAI members has come out with 'Technical Guide on Annual Return & GST Audit' which contains clause-by-clause analysis of Form GSTR-9, GSTR-9A and GSTR-9C. An Online Training program on Annual Return and GST Audit was also organised for the faculties from 2nd November to 4th November, 2018, recordings of which are available at web link <http://idtc.icai.org/live-webcasts.html>.

Further, Government has also notified 1st October, 2018 as the date for implication of Section 51 (TDS) and Section 52 (TCS) of the CGST Act, 2017. Shouldering the Government's initiatives of growth in India, ICAI is proactively working in the field of GST and recently submitted suggestions on GST Annual Return to

the Government and a representation suggesting non-deduction of TDS under MVAT Act after implementation of GST.

In addition to above, revised edition of our publication "FAQs and MCQs on GST" was also released providing comprehensive coverage of GST in an easy to understand question answer format. In an attempt towards providing working knowledge and understanding of the Law and other procedural aspects for the small traders, a detailed article "GST on Traders" was also hosted on the website [www.idtc.icai.org](http://www.idtc.icai.org).

The above website further carries offline webcasts on GST, e-learning, webcast series on UAE VAT, regular GST/ Customs updates, articles, information on upcoming courses, programmes/ seminars, e-publications, E- Newsletter on GST etc., for its registered users.

Let's continue to dedicate ourselves to the cause of the nation and continuous advancement of GST.

With Best Wishes,

**CA. Naveen N. D. Gupta**  
President, ICAI



# GST UPDATES

## Collection of Tax at source by Tea Board of India

Tea Board of India (electronic commerce operator) pays to the sellers (i.e. tea producers) for the supply of goods made by them and to the auctioneers for the supply of services made by them (i.e. brokerage) however there was no clarity regarding collection of tax that whether they should collect TCS from the seller of tea or from the auctioneers of tea or from both.

The Central Government vide Circular no. 74/48/2018-GST dated 5th November, 2018 has clarified that TCS @ 1% shall be collected by Tea Board respectively from the:-

- (i) Sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and
- (ii) Actioners on the net value of supply of services ( i.e. brokerage)

[Circular no. 74/48/2018-GST dated 5th November, 2018]



## Scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of del-credere agent

There were various issues regarding the valuation of supplies from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself. In order to clarify such issues the Central government has issued Circular no. 73/47/2018-GST dated 5th November, 2018 which provides as under:

Sl. No.	Issue	Clarification
1	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?	DCA will fall under the ambit of agent depends on the following possible scenarios:
		Invoice is issued by the Supplier either himself or through DCA
		DCA does not fall under the ambit of agent.
2	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?	Invoice for supply of goods is issued by the DCA in his own name
		DCA would fall under the ambit of agent
3	Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	It is clarified that in cases where the DCA is not an agent, the short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA. (which is exempted by s no. 27 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017)
		Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.
3	Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	It is clarified that in cases where the DCA is an agent, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient.
		It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per clause (d) of sub-section (2) of section 15 of the CGST Act.

**Del credere agent:** It is a type of principal-agent relationship wherein the agent acts not only as a salesperson or broker for the principal, but also as a guarantor of credit extended to the buyer.

[Circular no. 73/47/2018-GST dated 5th November, 2018]

### **GST Revenue collections for the month of October 2018 crosses Rupees One Lac Crore**

The total gross GST revenue collected in the month of October, 2018 is **Rs. 100,710 crore** of which CGST is **Rs. 16,464 crore**, SGST is **Rs. 22,826 crore**, IGST is **Rs. 53,419 crore** (including **Rs. 26,908 crore** collected on imports) and Cess is **Rs. 8,000 crore** (including **Rs. 955 crore** collected on imports).

The total number of GSTR 3B Returns filed for the month of September up to 31st October, 2018 is **67.45lakh**.

The Government has settled **Rs. 17,490 crore** to CGST and **Rs. 15,107 crore** to SGST from IGST as regular settlement. Further, **Rs. 30, 000 crore** has been settled from the balance IGST available with the Centre on provisional basis in the ratio of 50:50 between Centre and States. The total revenue earned by Central Government and the State Governments after regular and provisional settlement in the month of October, 2018 is **Rs. 48,954 crore** for CGST and **Rs. 52,934 crore** for the SGST.

The Revenue collected in October, 2018 of **Rs. 100,710 crore** is higher by 6.64% as compared to September, 2018 collection of **Rs. 94,442 crore**. The chart shows trends in revenue during the current year. The States which achieved extra- ordinary growth in total taxes collected from the State assesses include Kerala (44%), Jharkhand (20%), Rajasthan (14%), Uttarakhand (13%) and Maharashtra (11%).

[PIB Release ID: 184539 dated 1st November, 2018]

### **Central Goods and Services Tax (Thirteenth Amendment) Rules, 2018**

The Central Government vide Notification No. 60 /2018 –CT dated 30th October, 2018 has notified following rules further to amend the Central Goods and Service Tax Rules, 2017.

#### **1. Insertion of Rule 83A- Examination of Goods and Services Tax Practitioners:**

This rule provides the detailed procedure for examination of GST practitioners which are described as below:

S.No.	Particular	Description
1.	Examination	Conducted by the National Academy of Customs, Indirect Taxes and Narcotics (NACIN)
2.	Frequency of examination	Twice in a year
3.	Registration for the examination and payment of fee	Register online and pay fees as specified by NACIN
4.	Examination Centers	Across India at the designated centers
5.	Period for passing the examination and number of attempts allowed	<ul style="list-style-type: none"> <li>Exam within 2 years of enrolment</li> <li>Any number of attempts</li> </ul>
6.	Nature of examination	Computer Based Test consisting of Multi Choice Questions.
7.	Qualifying marks	50% of the total marks
8.	Guidelines for candidates	To be issued by NACIN
9.	Disqualification of person using unfair means or practice	Illustrative list given of “use of unfair means or practices”
10.	Declaration of result	Within 1 month of the conduct of examination
11.	Handling representations	Person not satisfied with his result may represent in writing, specifying the reasons therein to NACIN
12.	Power to relax	Board or State Tax Commissioner, may relax any of the provisions

#### **2. Insertion of Rule 142A- Procedure for recovery of dues under existing law**

Demand of tax, interest, penalty, fee or any other dues, recoverable consequent to proceedings launched under the existing law before, on or after the appointed day shall, unless recovered under that law, be recovered under the Act and may be uploaded in FORM GST DRC-07A electronically on the common portal and the demand of the order shall be posted in Part II of Electronic Liability Register in FORM GST PMT-01.

Where the above demand is rectified or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary thereof shall be uploaded on the common portal in FORM GST DRC-08A and Part II of Electronic Liability Register in FORM GST PMT-01 shall be updated accordingly.

**3. Substitution in Form GST PMT-01:** Following changes are made in the new Form :

- A column has been inserted to provide the tax period

starting and ending date to provide tax period wise details of other than return related liabilities.

ii. Now amount debited/credited under existing law also need to be provided in the newly substituted form.

**4.** Form GST DRC-07A inserted for Summary of the order creating demand under existing laws which requires various information like Act under which demand has been created, period for which demand has been created, name of the officer passing the order, period of stay (If demand is stayed) and Act wise details of demand created, paid and balance payable under existing law etc..

**5.** Form DRC- 08 inserted for Amendment/ Modification of summary of the orders creating demand under existing laws which requires the amended details of data furnished in Form DRC GST-07A.

[Notification No. 60/2018-Central Tax dated 30th October, 2018]

### **Final Return by the taxpayers whose registration has been cancelled on or before the 30th September, 2018**

Central Government vide Notification No. 58/2018- Central Tax dated 26th October, 2018 notified 31st December, 2018 as the due date for furnishing of final return in Form GSTR-10 by the persons whose registration under the said Act has been cancelled by the proper officer on or before the 30th September, 2018.

[Notification No. 58/2018- Central Tax dated 26th October, 2018]

### **Extension in the time limit for furnishing FORM GST ITC-04 for the period- July, 2017 to September, 2018**

Central Government vide Notification No. 59/2018- Central Tax dated 26th October, 2018 extended the time limit for furnishing the declaration in FORM GST ITC-04 in respect of goods/ capital goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the period from July, 2017 to September, 2018 till the 31st day of December, 2018.

[Notification No. 59/2018- Central Tax dated 26th October, 2018]

### **Clarification of the procedure in respect of return of time expired drugs or medicine**

Circular No. 72/46/2018-GST dated 26th October, 2018 clarified the procedure to be followed in respect of return of time expired drugs or medicines under the GST laws. The drugs or medicines are sold by the manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. They have a defined life term which is referred to as the date of expiry and on crossing the date of expiry, are returned back to the manufacturer through supply chain. Therefore, the retailer/ wholesaler can follow either of the below mentioned procedures for the return of the time expired goods:

### **A. Return of time expired goods to be treated as fresh supply**

- a) Person returning the time expired goods is a registered person
  - Return of goods to be treated as fresh supply
  - Value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply
  - Recipient is eligible to avail Input Tax Credit on said return supply subject to section 16 of the CGST Act.
- b) Person returning the time expired goods is a composition taxpayer
  - Return the said goods by issuing a bill of supply and pay tax at the rate applicable
  - Recipient is not eligible to avail ITC of said return supply
- c) Person returning the time expired goods is an unregistered person: Recipient may return the said goods by issuing any commercial document without charging any tax.

Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of section 17(5) (h) of the CGST Act. However, ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.

Illustration: Supposedly, manufacturer has availed ITC of Rs. 10/- at the time of manufacture of medicines valued at Rs. 100/-. At the time of return of such medicine on the account of expiry, the ITC available to the manufacturer on the basis of fresh invoice issued by wholesaler is Rs. 15/-. So, when the time expired goods are destroyed by the manufacturer he would be required to reverse ITC of Rs. 15/- and not of Rs. 10/-.

### **B. Return of time expired goods by issuing Credit Note:**

- a) As per section 34(1) of the CGST Act, the manufacturer or the wholesaler who has supplied the goods to the wholesaler or retailer, as the case may be, has the option to issue a credit note in relation to the time expired goods returned by the wholesaler or retailer, as the case may be.
- b) If the credit note is issued within the time limit specified in section 34(2) of the CGST Act, the tax liability may be adjusted by the supplier, provided the person returning the time expired goods has either not availed the ITC or if availed has reversed the ITC so availed against the goods being returned. However, if the time limit has expired, a credit note may still be issued but the tax liability cannot be adjusted by him in his hands
- c) Further, in case they are returned beyond the time period specified and a credit note is issued, there is no requirement to declare such credit note on the common portal by the supplier as tax liability cannot be adjusted in this case.



**Illustration:**

Case	Date of Supply of goods from manufacturer/ wholesaler to wholesaler/ retailer	Date of return of time expired goods from retailer / wholesaler to wholesaler / manufacturer	Treatment in terms of tax liability & credit note
Case 1	1st July, 2017	20th September, 2018	Credit note will be issued by the supplier (manufacturer / wholesaler) and the same to be uploaded by him on the common portal. Subsequently, tax liability can be adjusted by such supplier provided the recipient (wholesaler / retailer) has either not availed the ITC or if availed has reversed the ITC.
Case 2	1st July, 2017	20th October, 2018	Credit note will be issued by the supplier (manufacturer / wholesaler) but there is no requirement to upload the same on the common portal. Subsequently tax liability cannot be adjusted by such supplier.

Although, this circular discusses the return of expired goods, it may be applicable to goods returned on account of reasons other than the one detailed above.

[Circular No. 72/46/2018-GST dated 26th October, 2018]

**Clarifications of issues related to casual taxable person and recovery of excess ITC distributed by and ISD**

S.No.	Issue	Clarification
1.	Whether the amount required to be deposited as advance tax while taking registration as a casual taxable person (CTP) should be 100% of the estimated gross tax liability or the estimated tax liability payable in cash should be calculated after deducting the due eligible ITC which might be available to CTP?	1. While applying for registration as a casual taxable person, the FORM GST REG-1 (S. No. 11) seeks information regarding the “estimated net tax liability” only and not the gross tax liability.
2.	As per section 27 of the CGST Act, 2017, period of operation by casual taxable person is 90 days with provision for extension of same by the proper officer for a further period not exceeding 90 days. Various representations have been received for further extension of the said period beyond the period of 180 days, as mandated in law.	2. It is accordingly clarified that the amount of advance tax which a CTP is required to deposit while obtaining registration should be calculated after considering the due eligible ITC which might be available to such taxable person
3.	Representations have been received regarding the manner of recovery of excess credit distributed by an Input Service Distributor in contravention of the provisions contained in section 20 of the CGST Act.	Remarks: The clarification will result in minimal blockage of funds and ease of doing business. 1. In case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person. 2. While applying for normal registration the said person should upload a copy of the allotment letter granting him permission to use the premises for the exhibition and the allotment letter/consent letter shall be treated as the proper document as a proof for his place of business. 3. In such cases he would not be required to pay advance tax for the purpose of registration. 4. He can surrender such registration once the exhibition is over.

S.No.	Issue	Clarification
		<p>Remarks: The clarification will help taxpayers to obtain normal registration even for a short span of time of business operation.</p> <ol style="list-style-type: none"> <li>1. Where the ISD distributes the credit in contravention of section 20 of the CGST Act resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest and penalty if any.</li> <li>2. The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest by using FORM GST DRC-03.</li> <li>3. If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of section 73 or 74 of the CGST Act as the case may be. FORM GST DRC-07 can be used by the tax authorities in such cases.</li> <li>4. ISD would also be liable to a general penalty under the provisions contained in section 122(1) (ix) of the CGST Act.</li> </ol> <p>Remarks: The clarification will enable fast recovery of the excess credit by an ISD.</p>

[Circular No. 71/45/2018-GST dated 26th October, 2018]

### Clarification on certain issues related to refund

Central Government vide Circular No. 70/44/2018-GST dated 26th October, 2018 clarified certain issues related to refund:-

#### 1. Status of refund claim after issuance of deficiency memo and re-credit of electronic credit ledger:

Circular No. 59/33/2018-GST dated the 4th Sept, 2018 earlier clarified that once a deficiency memo has been issued against a refund application, the amount of ITC debited under rule 89(3) of the CGST Rules, 2017 is required to be recredited to the electronic credit ledger by using FORM GST RFD-01B and the taxpayer is expected to file a fresh application for refund.

Presently, the common portal does not allow a taxpayer to file a fresh application for refund once a deficiency memo issued against an earlier refund application for the same period. It is clarified that till the time such facility is developed, taxpayers would be required to submit the rectified refund application under the earlier Application Reference Number (ARN) only. Thus, it is reiterated that when a deficiency memo in FORM GST RFD-03 is issued to taxpayers, re-credit in the electronic credit ledger is not required to be carried out and the rectified refund application would be accepted by the jurisdictional tax authorities with the earlier ARN itself. It is further clarified that a suitable clarification would be issued separately for cases in which such re-credit has already been carried out.

#### 2. Allowing exporters who have received capital goods under EPCG to claim refund of IGST paid on exports:

GST Council, in its 30th meeting proposed the amendment of rule 89(4B) of the CGST Rules to allow exporters receiving capital

goods under the EPCG Scheme the facility of claiming refund of the IGST paid on exports. Any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13th October, 2017 shall be eligible to claim refund of the IGST paid on exports till the date of the issuance of the notification No. 54/2018 – Central Tax dated the 9th October, 2018.

Further, after the issuance of notification No. 54/2018 – Central Tax dated the 9th October, 2018, exporters who are importing goods in terms of notification Nos. 78/2017- Customs and 79/2017-Customs both dated 13th October, 2017 would not be eligible for refund of IGST paid on exports as provided in the said sub-rule. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs dated 13th October, 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18th October, 2017, shall continue to be eligible to claim refund of IGST paid on exports and would not be hit by the restrictions provided in the said sub-rule.

[Circular No. 70/44/2018-GST dated 26th October, 2018]

### Processing of Applications for Cancellation of Registration submitted in FORM GST REG-16

Central Government vide Circular No. 69/43/2018-GST dated 26th October, 2018 clarified various issues in relation to processing of the applications for cancellation of registration filed by taxpayers in FORM GST REG-16:-

- Rule 20 of the CGST Rules provides that the taxpayer applying for cancellation shall submit FORM GST REG-16 on the common portal within a period of 30 days of the occurrence of the event warranting the cancellation. However, it might be difficult in cases like piece meal transfer/disposal of business, to exactly pinpoint the day on which such an event occurs. In such cases,



the 30-day deadline may be liberally interpreted and application for cancellation may not be rejected because of the possible violation of the deadline.

- Since the cancellation of registration has no effect on the liability of the taxpayer for any acts of commission/omission committed before or after the date of cancellation, the proper officer should accept all such applications within a period of 30 days from the date of filing the application, except in the following circumstances:-

a) The application in FORM GST REG-16 is incomplete

b) In case of transfer, merger or amalgamation of business, the amalgamated or merged entity has not got registered with the tax authority before submission of the application

In above 2 cases, the proper officer shall inform in writing about the nature of the discrepancy and give a time period of 7 working days, from the date of receipt of the said letter, to reply. If case of no reply within the specified period, the proper officer may reject the application after giving an opportunity to be heard, recording reasons for rejection in the dialog box that opens once the 'Reject button is chosen.

If reply to the query is received and the same is found satisfactory, the Proper Officer may approve the same and proceed to cancel the registration by issuing an order in FORM GST REG-19. If reply is found to be not satisfactory, the Proper Officer may reject the application, after giving the applicant an opportunity to be heard. The Proper Officer must also record his reasons for rejection of the application in the dialog box that opens when the 'Reject button is chosen.

- The taxpayer seeking cancellation of registration shall pay, by way of debiting either the electronic credit or cash ledger, the input tax contained in the stock of inputs, semi-finished goods, finished goods and capital goods or the output tax payable on such goods, on the day immediately preceding the date of cancellation of registration, whichever is higher.

However, it is clarified that this requirement to debit the electronic credit and/or cash ledger should not be a prerequisite for applying cancellation and can also be done at the time of submission of final return in FORM GSTR-10.

In any case, once the taxpayer submits the application for cancellation of registration, he/she will not be able to utilize any remaining balances in his/her electronic credit/cash ledgers from the said date except for discharging liabilities under GST Act upto the date of filing of final return in FORM GSTR-10. Therefore, the requirement to reverse the balance in the electronic credit ledger is automatically met. In case it is later determined that the output tax liability of the taxpayer, as determined under sub-section (5) of section 29 of the CGST Act, was greater than the amount of input tax credit available, then the difference shall be paid by him/her in cash.

- In case the final return is not filed within the stipulated date, then notice in FORM GSTR-3A has to be issued to the taxpayer. If the taxpayer still fails to file the final return within 15 days of

the receipt, then an assessment order in FORM GST ASMT-13, shall have to be issued to determine the liability of the taxpayer. If the taxpayer files the final return within 30 days of the date of service of FORM GST ASMT-13, then the said order shall be deemed to have been withdrawn. However, the liability for payment of interest and late fee shall continue.

- Rule 68 of the CGST Rules requires issuance of notices to registered persons who fail to furnish returns under section 39. It is clarified that issuance of notice would not be required for registered persons who have not made any taxable supplies during the intervening period (i.e. from the date of registration to the date of application for cancellation of registration) and has furnished an undertaking to this effect.

- Section 29 of the CGST Act has been amended by the CGST (Amendment) Act, 2018 to provide for "Suspension" of registration. It is clarified that although the provisions of CGST (Amendment) Act, 2018 have not yet been brought into force, it will be prudent for the field formations not to issue notices for non-filing of return for taxpayers who have already filed an application for cancellation of registration. However, the requirement of filing a final return, remains unchanged.

[Circular No. 69/43/2018-GST dated 26th October, 2018]

### **Post audit authorities under Ministry of Defence exempted from TDS compliance**

Central Government vide Notification No. 57/2018 – Central Tax dated 23rd October, 2018 exempted the authorities under the Ministry of Defence from the applicability and compliance of section 51, with effect from 23rd October, 2018. However, the authorities (total 30 authorities) as specified in the annexure to this Notification are mandatorily required to deduct tax from the payment made or credited to the supplier of taxable goods or services or both, where the total value of such supply, under a contract, exceeds Rs. 2.5 lakhs.

[Notification No. 57/2018 – Central Tax dated 23rd October, 2018]

### **Specify the categories of Casual Taxable Persons exempted from obtaining registration- Superseding Notification No. 32/2017- Central tax dated 15th Sept, 2017**

Central Government vide Notification No. 56/2018 – Central Tax dated 23rd October, 2018 superseded Notification No. 32/2017- Central tax dated 15th Sept, 2017 and specified the following categories of casual taxable persons exempted from obtaining registration under the Central Goods and Services tax Act whereby:-

1. Persons making inter-State taxable supplies of handicraft goods as defined in the "Explanation" in Notification No. 21/2018 -Central Tax (Rate), dated the 26th July, 2018.
2. Persons making inter-State taxable supplies of certain notified products as per Notification No. 32/2017- Central tax dated 15th Sept, 2017.

Provided such person is availing benefit of Notification No. 03/2018 – Integrated Tax, dated the 22nd October, 2018 (Similar notification has been issued under integrate tax).

Further provided that the aggregate value of such supplies, to be computed on all India basis, does not exceed the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory. Such persons shall obtain a Permanent Account Number and generate an e-way bill in accordance with rule 138 of the CGST Rules, 2017.

[Notification No. 56/2018 – Central Tax dated 23rd October, 2018]

### **Central Goods and Services Tax (Amendment) Rules, 2018**

The Central Government vide Notification No. 53/2018 –Central Tax & Notification No. 54/2018 dated 9th October, 2018 has notified following rules further to amend the Central Goods and Services Tax Rules, 2017.

#### **Substitution in sub-rule 10 of Rule 96 [Refund of integrated tax paid on goods or services exported out of India]**

**For period from 23.10.2017 to 08.10.2018 (Notification No. 53/2018 –CT )**

The persons claiming refund of integrated tax paid on export of goods or services should not have –

(a) received supplies on which the following benefits of the Government of India has been availed by the respective counter-party suppliers (who have supplied to persons claiming refund):

- Notification No. 48/2017-Central Tax, dated the 18th October, 2017: It covers domestic supplies made against advance authorization, supply of capital goods against EPCG authorization, supply of goods to EOU & supply of gold by a bank or PSU against advance authorization.
- Notification No. 40/2017-Central Tax (Rate), dated the 23rd October or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017: This notification covers supplies made to merchant exporter at the rate of 0.1% in case of IGST or 0.05% each in case of CGST & SGST.

(b) received supplies on which the following benefits of the Government of India has been availed by the respective counter-party suppliers (who have supplied to persons claiming refund):

- Notification No. 78/2017-Customs dated the 13th October, 2017: This notification provides exemption from Customs Duty & IGST under Customs on goods imported or procured from Public or Private Warehouse or from International Exhibition by Hundred per cent EOU, STP or EHTP units.
- Notification No. 79/2017- Customs, dated the 13th

October, 2017: This notification provides exemption from Customs Duty & IGST under Customs on imports under EPCG, Advance Authorization, Advance Authorization for Annual Requirements, Advance Authorization for Deemed Export, Advance Authorization for export of Prohibited Goods and Narrow Woven Fabrics, etc.

Further, Notification No. 54/2018 dated 9th October, 2018 has been issued effective from 09.10.2018 to restrict the refund in case he has availed the benefits as mentioned aforesaid except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

#### **Substitution in sub rule 4 of Rule 89 [Application for refund of tax, interest, penalty, fees or any other amount]- Notification No. 54/2018 dated 9th October, 2018]**

Refund of unutilized input tax credit on account of zero rated supplies without payment of tax shall be granted where a person has :

(a) received supplies on which the following benefits of the Government of India has been availed by the respective counter-party suppliers (who have supplied to persons claiming refund):

- Notification No. 48/2017-Central Tax, dated the 18th October, 2017
- Notification No. 40/2017-Central Tax (Rate), dated the 23rd October or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017

(b) received supplies on which the following benefits of the Government of India has been availed by these very persons (claiming refund but their counter-party suppliers could have availed these benefits):

- Notification No. 78/2017-Customs, dated the 13th October, 2017
- Notification No. 79/2017- Customs, dated the 13th October, 2017

Hence in above cases, exporter has to export only under LUT and claim refund of unutilized ITC.

[Notification No. 53/2018 –CT and Notification No. 54/2018 dated 9th October, 2018]

### **Notifications issued under CGST Act, 2017 applicable to Goods and Services Tax (Compensation to States) Act, 2017**

Section 9(2) of the Compensation Cess Act provides that for all the purposes of claiming refunds, except the form to be filed, the provisions of the CGST Act and the rules made thereunder, shall apply in relation to the levy and collection of Compensation Cess.

Keeping in view the above provision the Central Government vide Circular No. 68/42/2018-GST dated 5th October, 2018 has clarified that the Notification no. 16/2017-CT ( R ) dated

28th June, 2018 issued for notifying organizations for claiming refunds of taxes paid on notified goods shall be applicable to Goods and Services (Compensation to States) Act, 2017.

Therefore, UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein, having being specified under section 55 of the CGST Act, 2017, are entitled to refund of Compensation Cess payable on intra-State and inter-State supply of goods or services or both received by them subject to the same conditions and restrictions, mutatis mutandis, as prescribed in Notification No. 16/2017-Central Tax(Rate) dated 28.06.2017.

[Circular No. 68/42/2018-GST dated 5th October, 2018]

### **Modification to the Guidelines for Deductions and Deposits of TDS by the DDO under GST**

Central Government vide Circular No. 67/41/2018-DOR dated 28th September, 2018 made following modification to the Point 9(iv) of the Circular No. 65/39/2018-DOR dated 14/09/2018 which provides for the Guidelines for Deductions and Deposits of TDS by the DDO under GST:-

To enable the DDOs to account for the TDS bunched together (in terms of Option II), following sub-head related to the GST-TDS below the Head 8658.00.101-PAO Suspense has been opened.

S. No.	Major Head	Sub Head Description	Major Head Serial Code (8-digit reduced accounting code)	SCCD Code
1.	8658-00-101	08-GST TDS	86580344	367

[Circular No. 67/41/2018-DOR dated 28th September, 2018]

### **GST on Residential programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts- reg.**

Circular No. 66/40/2018-GST dated 26th September, 2018 clarified taxability of the services of religious and charitable trusts by way of residential programmes or camps meant for advancement of religion, spirituality or yoga in the light of the Chapter 39 "GST on Charitable and Religious Trusts" of Compilation of 51 GST Flyers available on CBIC website at the link <https://goo.gl/EgAJtA>.

[Circular No. 66/40/2018-GST dated 26th September, 2018]

### **Insertion of an explanation in an entry in notification No. 12/2017 – CT (Rate)**

Central Government vide Notification No. 23/2018- CT (Rate) dated 20th September, 2018 made insertion of following explanation in serial no. 41(3) of table of the said notification, namely:-

"Explanation. - For the purpose of this exemption, the Central Government, State Government or Union territory shall have 50

per cent or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory."

Similar Notification have been issued in Integrated Tax as well as Union Territory Tax laws vide Notification No. 24/2018-Integrated Tax (Rate) dated 20th September, 2018 and Notification No. 23/2018-Union Territory Tax (Rate) dated 20th September, 2018 respectively.

[Notification No. 23/2018- CT (Rate) dated 20th September, 2018, Notification No. 24/2018-Integrated Tax (Rate) dated 20th September, 2018, Notification No. 23/2018-Union Territory Tax (Rate) dated 20th September, 2018]

### **Rate of TCS to be collected by every electronic commerce operator for intra-State taxable supplies and inter- State taxable supplies**

Central Government vide Notification No. 52/2018 – CT dated 20th September, 2018 notifies that every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of half per cent of the net value of intra-State taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the said operator.

Further, Central Government vide Notification No. 02/2018 – Integrated Tax dated 20th September, 2018 notifies that every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of one per cent. of the net value of inter-State taxable supplies made through it by other suppliers where consideration with respect to such supplies is to be collected by the said operator.

Similar Notification have been issued in Union Territory Tax laws vide Notification No. 12/2018 – Union Territory Tax dated 28th September, 2018 and Notification No. 13/2018 – Union Territory Tax dated 28th September, 2018 respectively

[Notification No. 52/2018 – CT dated 20th September, 2018, Notification No. 02/2018 – Integrated Tax dated 20th September, 2018]

### **Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117(1A) of the Central Goods and Service Tax Rules, 2017 in certain cases**

The Commissioner, in exercise of the powers conferred by rule 117 of the Central Goods and Services Tax Rules, 2017 read with section 168 of the Central Goods and Services Tax Act, 2017, vide Order No. 4/2018-GST dated 17th September, 2018 provides for extension in the period for submitting the declaration in FORM GST TRAN-1 till 31st January, 2019, for those registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal.

[Order No. 4/2018-GST dated 17th September, 2018]



# CUSTOMS

## Electronic sealing – Deposit in and removal of goods from Customs bonded Warehouses, clarification

The Central Government vide Circular No. 39/2018- Customs dated 23rd October, 2018 clarified that RFID seals shall be procured from the destination warehouse in case of warehouse to warehouse transfer also. The clarification has been made referring to the Circular 19/2018-Customs dated 18th June, 2018 whereby the importer of goods is permitted to procure a RFID seal from the destination warehouse.

Moreover, Central Government vide Circular No. 41/2018- Customs dated 30th October, 2018 extended the date of implementation of Circular No. 19/2018- Customs dated 18th June, 2018 to 01st January, 2019 in order to enable establishment of infrastructure and procurement of seals by warehouse.

[Circular No. 39/2018- Customs dated 23rd October, 2018, Circular No. 41/2018- Customs dated 30th October, 2018]

## Cases where IGST refunds have not been granted due to claiming higher rate of drawback OR where higher rate and lower rate were identical –reg

Circular 37/2018-Customs dated 9th October, 2018 clarified that exporters are availing the option to take drawback at higher rate in place of IGST refund out of their own volition. Considering the fact that exporters have made declaration in the shipping bill while claiming the higher rate of drawback, it has been decided that it would not be justified allowing exporters to avail IGST refund after initially claiming the benefit of higher drawback.

[Circular 37/2018-Customs dated 9th October, 2018]

## Advisory-circular for registration of beneficiaries on ICEGATE-regarding

Government vide Circular 35/2018- Customs dated 1st October, 2018 has introduced Single Window Interface for facilitating Trade (SWIFT) as part of ease of doing business initiative to integrate Customs and other Participating Government Agencies (PGAs) for seamless processing of import and export clearances. One of the component of SWIFT is e-SANCHIT. Under

eSANCHIT, the system allows a trader to submit all supporting documents for clearance of consignments electronically with digital signatures, thereby making the entire process of consignment clearance faceless and paperless. It has been made mandatory for all the importers from 01st April, 2018 onwards. Shortly eSANCHIT facility will be extended to exports also, for which a pilot is underway.

Further, CBIC is embarking on a project under SWIFT to bring all the Participating Government Agencies (PGAs) under eSANCHIT wherein instead of importer/exporter the PGAs who issue Licences, Permits, Certificates and Other Authorizations (LPCOs), will upload the documents themselves.

Once the LPCO is uploaded by a PGA, a unique IRN (Image reference number) will be generated by the system and the same will be communicated to the beneficiary. For availing this facility, the registered email id with ICEGATE will be used. In future, a view facility will also be available, wherein a beneficiary will be able to view the documents uploaded by the PGAs during a given period.

A pilot is expected to be launched shortly for testing the eSANCHIT facility for PGAs with three PGAs. Thereafter on successful testing, the facility will be extended to all the PGAs. Once the facility of uploading the document on eSANCHIT by PGAs is implemented, the beneficiaries (importer/exporter) will not be allowed to upload such documents themselves.

Further, a detailed procedure on registration is available at ICEGATE website under the path [www.icegate.gov.in](http://www.icegate.gov.in) --> Downloads --> Registration Demo.

[Circular 35/2018- Customs dated 1st October, 2018]



## FORTH COMING EVENTS UNDER THE AEGIS OF INDIRECT TAXES COMMITTEE

**15th December 2018**

**Place : Jaipur • CPE Hours : 30 Hours**

**Title of the Seminar:** Certificate Course on GST  
**Contact Details :** Centre of Excellence of ICAI  
 Ph : 141-3044200/3044214  
 Email : [coejaipur@icai.in](mailto:coejaipur@icai.in)

# TAX DEDUCTION AT SOURCE (TDS) UNDER GST

Tax Deduction at Source (TDS), a long-standing provision under Income tax is now the newest facet of GST law.

Notification No. 50/ 2018-Central Tax, dated 13th September, 2018 is issued to bring into force provisions of TDS under GST with effect from October 01, 2018.

So, w.e.f. 1st October, 2018, notified class of assesses have to undertake TDS deduction under GST, file GST-TDS returns, issue GST-TDS certificates and take-up all other entailing compliances.

As the provisions are novel, we have put forth this real quick alert, to update you on the key issues as this would require host of things to be undertaken by organisations such as –

- Registration as a Tax Deductor
- Customisations in the ERP systems
- Trainings to concerned personnel
- Communication to the suppliers (by deductors)/ recipients (by deductees)

## Applicability of provisions – Who shall be liable to deduct?

Under section 51 of the CGST Act, 2017 read with Notification No. 50/ 2018-Central Tax, dated 13th September, 2018 the following are the categories of the persons who are mandated to undertake TDS deduction:

- a) a department or establishment of the Central Government or State Government; or
- b) local authority; or
- c) Governmental agencies; or
- d) such persons or category of persons as may be notified by the Government on the recommendations of the Council.

The Central Government vide Notification No. 33/ 2017-Central Tax, dated 15th September, 2017 notified the persons under clause (d) of section 51(1) namely: -

- (i) 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 51% or more participation by way of equity or control, to carry out any function;
- (ii) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
- (iii) public sector undertakings;

The aforementioned category of persons are required to undertake TDS deduction as per section 51 of the CGST Act, 2017 and similar provisions contained in the IGST Act from 1st October, 2018.

In terms of the categories of persons who are mandated as per the provisions, clause (a) is self-explanatory, clause (b) - Local authority has been defined under section 2(69) of the CGST Act, 2017, clause (c) – Governmental agencies has not been defined under the Act or any other notifications. However, the following link provides indicative list of agencies [<https://asti.cgiar.org/india/agencies>], clause (d (i)) is self-explanatory. However, it is important to note that there is difference between Government authority and Government entity defined in the Central Tax (Rate) notifications for services as those clauses require minimum 90% equity shareholding or control and it is necessary for them to carry out functions entrusted under Article 243G or 243W of Constitution, clause – (d(ii)) – self-explanatory and clause (d(iii)) – public sector undertakings refer to undertakings where the direct shareholding by the Government is at least 51% or more.

It is to be noted that some of the experts relying on Shapoorji Paloonji & Company (P) Ltd. v. CCCEx. & ST, Patna [2016 (42) S.T.R. 681 (Pat.)] is of the view that the condition of “51% or more participation by way of equity or control, to carry out any function” is related to sub-clause (b) alone. The clause (a) is followed by “,” and the word “or”. Therefore, each of the sub-clause is an independent provision.

## Applicable rate of GST-TDS deduction

TDS has to be deducted at the following rates:

Nature of Supply	Rate of TDS
Intra-State supply	(1% CGST + 1% SGST)
Inter-State supply	2% (IGST)

## Threshold limit for TDS deduction

TDS is required to be deducted by the aforementioned persons at the aforementioned rates if the value of a contract exceeds Rs. 2,50,000/-.

A common question that now arises is whether for the purpose of TDS deduction, value of the whole contract is to be considered or individual invoices even if each such invoice is raised for < Rs. 2,50,000/-.

Section 51 of the Act uses the verbatim “a contract”. Meaning, the value of the whole contract for the supply of goods or services has to be considered.

Thus, once the value of the underlying contract exceeds Rs. 2, 50,000/-, TDS is required to be deducted with respect to

payment for each invoice even if the value of the stand-alone invoice is < Rs. 2, 50,000/-.

Value for the purpose of determining the trigger of TDS deduction shall be value of supplies excluding CGST/ SGST/ UTGST/ IGST and cess.

In many cases, it is a business practise with Government related entities that whole consideration is not immediately disbursed to the vendors. A portion of the consideration is withheld in the form of "Retention Money".

A common question that arises again is whether GST-TDS has to be deducted on the value including such retention money given the fact that same is not immediately paid.

GST-TDS has to be deducted on the value including any retention monies withheld as even though the payment to the vendor is not made immediately, the liability towards the same is credited to the supplier in books of accounts of the deductor.

Various scenarios are better explained illustratively as under:-

Illustration	Implication
Contract Value: Rs. 2,20,000/- (including GST of Rs. 20,000/-)	No TDS is required to be deducted as the value of contract is less than Rs. 2,50,000/-
Contract value: Rs. 2,95,000/- (including GST of Rs. 45,000/-)	No TDS is required to be deducted as the value of contract is equal to Rs.2,50,000/- (Rs. 2,95,000 - Rs. 45,000/-)
Contract value: Rs. 3,50,000/- (including GST of Rs. 60,000/-)	TDS is required to be deducted as the value of contract exceeds Rs. 2,50,000/- (Rs. 3,50,000 - Rs. 60,000/-)
Contract Value: Rs.3,54,000/- (including GST of Rs. 54,000/-) but individual Bill value is Rs. 1,50,000/- (including GST of Rs. 27,000/-)	TDS is required to be deducted as the value of whole contract exceeds Rs. 2,50,000/- (Rs. 3,54,000 - Rs. 54,000/-) even though the value of individual bills is less than Rs. 2,50,000/-

### TDS deducted is part of Cash Ledger or Credit Ledger of deductee?

In terms of section 51(5) of the CGST Act, the tax deducted by the deductor would be claimed by the deductee as a credit in their electronic cash ledger.

However, the rules and forms notified for returns seem to have a contrary mechanism to route the TDS credit through Part C of FORM GSTR-2A of the deductee.

Rationally, otherwise also, it should flow as part of cash ledger. If such TDS flows as part of credit ledger then the deductee would have no option but to accumulate such credits and not go for refund as refund is allowable only in two instances i.e. zero-rated supplies and inverted duty structure.

### TDS to be deducted on accrual or cash basis

TDS is to be deducted by all of the aforementioned persons

when payment is:

- Made to the supplier; or
- Credited to the supplier.

Per the reading of section 51, it implies that GST-TDS (similar to TDS deduction under Income Tax Act, 1961) has to be deducted at the time of either making actual payment to the supplier or even if the liability to the supplier is recognised in books of accounts by way of a credit to the account of the supplier.

Though the provisions of GST do not explicitly use the verbatim "whichever is earlier" the intent of the law here is to impose TDS deduction at the occurrence of any one of the stated events.

Therefore, if any advance payments are made to vendors on the basis of proforma invoices without having accrued any liability in books, even then the liability to make GST-TDS deduction is triggered.

### Transitional provisions

TDS is to be deducted as discussed on payment or accrual basis. Merely by the reason of making payment to the vendors after 1st October, 2018 in respect of liabilities created prior to 1st October, 2018, provisions of GST- TDS cannot be said to have been attracted.

In any case, the levy of TDS cannot be retrospective and has to be prospective only. Thus, with respect to liabilities already credited to the account of the supplier prior to 1st October, 2018 and payments made after 1st October, 2018 there shall arise no requirement to make a GST-TDS deduction.

However, what appears that the TDS provisions shall also apply in respect of those liabilities which are freshly for the first time created on or after 1st October, 2018 irrespective of the fact that the supply was made prior or invoice was issued prior to 1st October, 2018.

### Illustrations:

- A PSU entered into a contract worth Rs. 20 lakhs with a supplier ABC prior to 1st October, 2018 and made payment of Rs. 5 lakhs in respect of invoice dated 15th October, 2018. In this case, TDS is to be deducted since payment is made after effective date.
- If in the above illustration, PSU had made payment of Rs. 5 lakhs prior to 1st October, 2018 and made the payment of balance amount of Rs. 15 lakhs on 15th October, 2018, then in this case, TDS will be deducted only in respect of Rs.15 lakhs, provided the invoice for Rs. 15 lakhs is raised after 1st October, 2018.

### Applicability or non-applicability of TDS levy

TDS is required to be deducted on both inter-State as well as intra-State levies.

However, TDS is not to be deducted in instances where the location of supplier (deductee) and the place of supply are in a State which is different from the State of GST registration of the



recipient (deductor).

The following scenarios explain illustratively:

- a. **Location of supplier, place of supply and location of recipient are in the same State.** It would be intra-State supply and TDS (CGST + SGST) shall be deducted. It would be possible for the supplier (i.e., the deductee) to take credit of TDS in his electronic cash ledger.
- b. **Location of supplier and location of recipient are in the same State but the Place of supply is in different State.** In such case, IGST would be levied. TDS to be deducted would be TDS (Integrated tax) and it would be possible for the supplier to take credit of TDS in his electronic cash ledger.
- c. **Location of supplier as well as place of supply is in same State and the recipient is registered in a different State.** The supply would be intra-State supply and CGST + SGST would be levied. In such case, transfer of TDS (CGST + SGST of deductor State) to the cash ledger of the deductee (CGST + SGST of another State) would be difficult and therefore, the TDS provisions would not apply.

Thus, when both the location of supplier as well as the place of supply is different from that of the recipient registration, no TDS deduction can be made.

These situations can be understood by way of following table:

Particulars	Situation (a)	Situation(b)	Situation(c)
LOS (Supplier/ Deductee)	Telangana	Mumbai	Mumbai
POS	Telangana	Telangana	Mumbai
LOR (Recipient/ deductor)	Telangana	Telangana	Telangana
Tax charged	(CGST + SGST) of Telangana	(IGST) with Place of supply as Telangana	(CGST + SGST) Maharashtra
TDS applicability	Yes	Yes	No GST TDS to be deducted

### TDS and taxability of supplies

TDS is to be deducted on taxable supplies of goods or services or both.

TDS shall not be liable to be deducted if the underlying supply is exempt or non-taxable (i.e.) supply that is not leviable to GST.

### TDS deduction in case of unregistered, whose supplies are taxable under RCM and composition scheme suppliers

Section 51 of the CGST Act, 2017 mandates that the notified persons shall deduct TDS from amounts paid or credited to

the supplier of taxable goods or services if the contract value exceeds Rs. 2,50,000/-.

On making perusal of section 51 and section 2(105) wherein the term "Supplier" is defined, it may be inferred that the word "supplier" encompasses all persons who are supplying any goods or services whether registered or not. This proposition seems to hold good even in case of supplier whose supplies are liable to tax under reverse charge mechanism. However, the study material on TDS released by NACIN contains Para 4 titled as "When tax deduction is not required to be made under GST:" and the said Para inter-alia contradict the situation while stating that the tax deduction is not required in the following situation-

(k) Where the tax is to be paid on reverse charge by the recipient;

(l) Where the payment is made to an unregistered supplier.

In case of vendors registered under the composition scheme, yet again the law is unclear that as to the applicability of TDS provisions. Under the composition levy, a supplier would not be charging any GST from the recipient of supplies. A manufacturer or a trader of composition scheme would be required to pay GST at the rate of 1% on the supply whereas imposing TDS levy on the said supply would outrightly deduct 2% of tax out of the consideration receivable by him which appears to be an outright anomaly in the law.

### Registration requirements under GST

As per section 24(vi) of the CGST Act, 2017 read with rule 12 of the CGST Rules, 2017, every person who is required to deduct tax at source under section 51 is required to mandatorily obtain a registration whether already registered or not.

This gives us the following scenarios:

Particulars	Decision
Not registered since aggregate turnover is < Rs. 20 lakhs but required to deduct TDS under section 51	-Mandatory registration as a "Tax Deductor" -No requirement to take a regular GST registration.
Already registered under GST and having a valid GSTIN	Required to take a separate GST registration again as a "Tax Deductor" even if already having a valid GSTIN.

- GST registration as a tax deductor has to be applied in FORM GST REG-07.
- Certificate for registration shall be granted in FORM GST REG-06.
- The option to avail registration as a "Tax Deductor" has to be selected in the home page of the GST portal prior to generating the TRN only.
- GST registration as tax deductor shall be available on the basis of PAN or TAN of the taxpayer.

An important premise to be noted here is that this registration as a tax deductor would be over and above the regular GST

registration already obtained by the entity. Regular compliances such as those filing monthly FORMS GSTR-3B & GSTR-01 under the main registration shall continue status quo.

### Returns to be filed by a TDS deductor

Every tax deductor is required to file return in FORM GSTR-07 by the 10th of the succeeding month in which such tax deduction is made.

For Ex: If TDS is withheld with respect to a payment or a credit to the supplier on 15th October, 2018, such TDS amount has to be deposited to the Government by filing FORM GSTR-7 before 10th November, 2018.

Circular No. 65/ 39/ 2018-DOR, dated September 14, 2018 prescribe the guidelines for deduction and deposit of TDS by the DDO's.

Post depositing the TDS to Government by filing FORM GSTR-07 on or before 10th of every month, deductor is required to issue a TDS certificate in FORM GSTR-7A giving details of the GSTIN of the supplier (deductee), invoice details, value of supply made and tax deducted thereon within five days of date of remittance of TDS to the Government.

The amount of TDS deducted shall appear as a credit in the electronic cash ledger of the supplier (deductee) and would be available to him as cash equivalent at the time of filing his monthly FORM GSTR-3B for payment of tax.

### References:

- (i) Section 24 & Section 51 of the CGST Act, 2017
- (ii) Section 20 of the IGST Act, 2017
- (iii) Rule 66 of CGST Rules, 2017
- (iv) FORM GSTR-7 & FORM GSTR-7A
- (v) Notification No. 33/ 2017-Central Tax, dated 15th September, 2017
- (vi) Notification No. 50/ 2018-Central Tax, dated 13th September, 2018
- (vii) Circular No. 65/ 39/ 2018-DOR, dated 14th September, 2018 amended vide Circular No. 67/ 41/ 2018-DOR, dated 28th September, 2018



## FORTH COMING EVENTS UNDER THE AEGIS OF INDIRECT TAXES COMMITTEE

**17th November 2018**

**Place : Jaipur • CPE Hours : 30 Hours**

**Title of the Seminar :** Seminar on GST Audit & Annual Return  
**Contact Details :** Ahmedabad Branch of WIRC  
 Ph : 079-39893989  
 Email : ahmedabad@icai.org

**Title of the Seminar :** Certificate Course on GST  
**Contact Details :** EIRC of ICAI  
 Ph : 91-33 30211104  
 Email : eircevents@icai.in

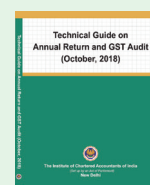
**23rd November, 2018**

**Place : Ahmedabad • CPE Hours : 6 Hours**

## PUBLICATIONS

The Indirect Taxes Committee of ICAI keeps the members updated with the changes through its publications. The following publications have been published by the Committee:

This Technical Guide on GST Audit is a written attempt to create awareness among the trade/industry and more importantly for the members to discharge their professional duties. It has been comprehensive designed and contain clause by clause analysis of Form GSTR-9, 9A and Form GSTR-9C, will be of great significance and will provide assistance to the members on the critical issues arising while conducting audit.



# E-WAY BILL – A CRITICAL ANALYSIS

## Introduction:

The way bill system is not new to trade and industry, but the talk of a way bill only ruffles feathers. What is e-way bill? Why e-way bill? Why are checkpoints required? Do you require e-way bill for movement of goods within the States? What happens when movement of goods are not accompanied by way bills? What happens when an incorrect way bill is issued? These are the few common questions (amongst others) which every business would have. An attempt is made to clarify such issues in this article.

The way bills or transit documents existed for the last 3 to 4 decades in various forms, basically to avoid or curb evasion that was rampant in those days. Abolition of Check Posts is one of the key advantages of the GST regime which has resulted in faster and smooth transportation of goods across State borders. However, mobile squads and a few check posts will continue to exist which will act as a check on defaulters and violators. E-Way bill was introduced as a vital cog of the GST regime on the insistence of various State Governments, but it has proved to be quite cumbersome. The main grouse of the trade has of course been that even with the introduction of the GST regime the inspector raj would persist in the form of E-way Bills.

In terms of Section 68 of the CGST Act, 2017 read with Rule 138A of the CGST Rules, 2017 for transportation of goods by road (or other modes), a document called an Electronic Way Bill is required to accompany the goods during their movement, if the value of the goods exceed a certain prescribed limit. The information / data on e-way bills generated will be matched with the outward supplies (sales) statement called as Form GSTR -1 to ensure that the supplies are legitimate and are properly documented.

The Centralized software platform for E-Way bill system is developed by the NIC (National Informatics Centre) along with GSTN. Provisions relating to e-Way bill were introduced throughout the country from 1.04.2018 for inter-State movement of goods. The provisions relating to e-Way bill for the intra state transactions was / will be introduced phase wise. The following is the list of states wherein e-Way bill is applicable for intra-State movement of goods with effect from the dates mentioned therein-

States Notifying e-Way bill for intrastate movement of goods	Date of notification
Assam	16-May-18
Nagaland	01-May-18
Arunachal Pradesh, Madhya Pradesh, Meghalaya, Puducherry and Sikkim	25-Apr-18
Bihar, Haryana, Himachal Pradesh, Jharkhand and Uttarakhand	20-Apr-18

Andhra Pradesh, Gujarat, Kerala, Telangana and Uttar Pradesh	15-Apr-18
Karnataka	01-Apr-18

Vide Notification No 15/2018 dated 23.03.2018 the Central Government has appointed first day of April 2018 as the date on which the provisions e-Way Bill Rules shall come into force. The provisions relating to inspection, search, seizure and arrest shall mutatis mutandis apply in relation to IGST. Hence Rules relating to E-Way bill, though promulgated in CGST Rules would apply with equal force for inter-state movement of goods.

## I. WHO SHALL GENERATE AN E-WAY BILL:

- The persons responsible to generate the e-Way bill are:
  - The person causing movement of goods if consignment value exceeds 50,000/-:
    - Ordinarily, the consignor;
    - Where the consignor is not a registered person, the Consignee;
  - The Transporter, where an e-Way bill has not been generated as cited supra in respect of movement of goods;
- In case of inter-State movement of goods, irrespective of the value of goods, the following persons would be responsible for raising an e-way bill:
  - Principal/job worker;
  - An unregistered consignor of handicraft goods for inter-State movement, who is exempt from registration under Section 24(i) and (ii);
- The registered person can authorize a transporter or e-commerce operator or a courier agency to furnish the information in Part A of Form GST EWB-01, on behalf of the registered person.
- Unregistered transporter can enrol on the common portal and generate e-Way bill on behalf of its customers;
- Any Person (unregistered recipient) can enrol & generate the e-Way bill for movement of goods for his/her own use
- Any person desirous of generating may voluntarily generate an e-Way bill even when value of consignment is lesser than 50,000 Rupees. If the goods are moved by unregistered person and handed over to the transporter for transportation of goods then either of them can generate an e-Way bill (EWB). The unregistered person can generate EWB as an unregistered person.

## Practical Intricacies

- In cases of outward supply returns (sales returns), the customer or the transporter shall be the person causing the movement of goods and hence shall be



responsible to generate the e-Way bill.

- b. In case of high sea sales, since the supply is effected before the goods cross the customs frontiers, an e-Way bill is not required. However, the ultimate buyer will be required to generate an e-Way bill (if the consignment value exceeds Rs. 50,000) to move goods from the port to the place of business.
- c. In case a customer is purchasing and moving the goods himself and the value exceeds Rs.50,000/-, an e-Way bill can be generated by the taxpayer or supplier based on the invoice issued to him. The customer may also enrol as a citizen and generate the e-Way bill himself.
- d. In case the consignee or recipient refuse to take the delivery of goods, the transporter can get one more e-Way bill generated with the help of the supplier/recipient by indicating the supplies as sales return with relevant document.
- e. If the individual bills are less than Rs. 50,000/- but the total value of goods in a conveyance exceed Rs. 50,000/- the transporter shall be responsible / liable to raise an e-Way bill since the individual parties will not be liable to generate an e-Way bill.

## II. PROCEDURAL ASPECTS

The following is the basic procedure to generate an e-Way bill

1. Furnish information in Form GST EWB-01 (PART A and PART B) before the commencement of movement of goods (on [www.ewaybillgst.gov.in](http://www.ewaybillgst.gov.in))
2. PART A contains the consignment details which cannot be changed later which is as under

GSTIN	GSTIN of supplier and recipient of goods. (If unregistered, "URP" shall be entered)
Place of Dispatch / Delivery	It shall indicate the PIN Code of the places of Dispatch / Delivery. Option available to enter the addresses of these places (not mandatory)
Document Number	It shall contain reference of Invoice No., Bill of supply No., Delivery Challan No.
Document Date	Date shall be based on the date of document, as specified above.
Value of Goods	Value shall be determined in accordance with Section 15 and shall include CGST, SGST or UTGST, IGST and Cess, if any
HSN Code	If Annual Turnover (in preceding FY) is less than Rs. 5 Cr. – 2 Digits If Annual Turnover (in preceding FY) is more than Rs. 5 Cr. – 4 Digits
Reason for Transport	Following are the available options: (i) Supply (ii) Export / Import (iii) Job Work (iv) SKD / CKD – i.e., Semi Knocked Down / Completely Knocked Down (v) Recipient not known (vi) Line Sales (vii) Sales Returns (viii) Exhibition or fairs (ix) For own use (x) Others

3. PART-B contains the details of the conveyance to be entered as under

Vehicle No. for road	Vehicle registration No. as per the Regional Transport Office (RTO)
Transport Document No./ Defence Vehicle No./ Temporary Vehicle Registration No./ Nepal/Bhutan Vehicle Registration No.	Indicates Goods Receipt Number (GRN) or Railway Receipt Number or Airway Bill Number or Bill of Lading number or forwarding Note Number or Parcel bill number

4. A unique e-Way number (EBN) will be generated on the portal after the details as mentioned above are filled.
5. Obtain a print of the details along with the unique (EBN) generated after the details are uploaded
6. Move the goods under the cover of the e-Way bill and the 'tax invoice' or such other document
7. Acceptance / rejection of the e-Way bill to be made within 72 hours of details being available on portal (OR time of delivery of goods if earlier than 72 hours) – Else it results in deemed acceptance
8. PART A slip is a temporary number generated after entering all the details in PART-A. This can be shared or used by the transporter or the client who can later enter the details in PART B and generate the e-Way bill. This is useful when you have prepared the invoice and when transporter details are not available. This is temporarily stored on the portal and once the transporter details are entered in PART B the e-Way bill can be generated.
9. The details of conveyance are not required to be declared if the distance between the place of consignor and the place of transporter is less than 50 Kms. It is not required even where the distance between the place of transporter and the place of consignee is less than 50 Kms.
10. Where the goods are transported by railways or by air or vessel, the e-Way bill shall be generated on the common portal in Part B of Form GST EWB-01. Where the goods are transported by railways, the railways shall not deliver the goods unless the e-Way bill is produced at the time of delivery. The time period for filling details in Part B shall be furnished within fifteen days of furnishing details in Part A.
11. Where the goods are transported by the registered person using his own conveyance or public conveyance by road then Part B of Form GST EWB-01 must also be filled in addition to part A of Form GST EWB 01.
12. Transporters not registered under GST who wish to cause the movement of goods shall enroll on the portal to get a 15-digit unique Transporter ID or TRANSIN. This can be shared by them to their clients who may enter this number while generating e-Way bills.
13. The particulars of PART A cannot be changed even in case of entering the wrong information. The only option left to the person is to cancel the e-Way bill. However, PART-B can be updated any number of times within the overall validity of

the e-Way bill. The unique number generated is valid for a period of 15 days.

14. If the e-Way bill has been verified by a Proper Officer during its transit, it cannot be cancelled.

#### Practical Intricacies

- If a person has more than one registered place of business, he can create sub users for a particular place of business and generate the e-Way bill with that business location as the place of dispatch. This helps when there are multiple places of business and goods are moved from each of those premises. A maximum of 3 sub users can be created for every additional place of business.
- If the selected transporter denies carrying goods, or goods are not transported or transported in the manner specified, the e-Way bill should be cancelled within 24 Hours. If 24 hours have elapsed, then the other party (supplier/recipient) must be requested to cancel the e-Way bill within 72 hours.
- Even if there are multiple invoices belonging to the same consignor and consignee, separate and multiple EWB's shall be generated. Multiple invoices cannot be clubbed to generate one e-Way bill. However, the multiple EWB's can be clubbed into one consolidated e-Way bill if the goods are being moved in a single conveyance.
- Where the goods are transported from one conveyance to another then the details of conveyance in the E-Way bill in Part B should be updated. The authorized transporter can assign the e-Way bill to any enrolled or registered transporter for further transportation. The new transporter can alone update PART-B.
- PART-B has to be updated each time the vehicle changes in the case of multimodal transport.

### III. VALUATION ASPECTS

- The consignment value means the value determined under section 15 of the CGST Act. Such value shall include CGST, SGST, UTGST, IGST and cess charged if any. Customs shall also be includible. The consignment value ought to exclude freight charges paid to transporter and shipping charges charged by e-commerce operator, since they do not form part of assessable value u/s 15 of the CGST Act.
- The consignment value shall however exclude value of exempted goods only in cases where the invoice is issued in respect of both exempted and taxable supply of goods.

#### Practical Intricacies

- The value in e-Way bill in case goods are sent on lease basis will be the lease rental charges to be received and not the value of goods leased [Explanation 2 to 138(1)]
- The consignment value shall be only the value of the goods being moved and shall not include any service element. Further, the HSN codes of only the goods shall be specified and not of the services in the invoice.
- There are few issues that arise in respect of which one does not find an answer in law which are:

- What is the value that is to be entered in e-way bill in case where the goods are being moved in multiple conveyances (which are not in semi-knocked down or completely knocked down conditions) and a single invoice is raised?
- Whether the value to be entered is total invoice value or does the value of consignment be entered for each e-way bill raised?
- What happens in cases where the goods are so large in size that they have to be transported in multiple conveyances and value of the consignment cannot be determined? Some of the experts opine that, in such cases, value of the invoice must be entered and it could be supported by a covering letter stating why the goods are being moved in multiple conveyances at the same time on a single invoice.

### IV. VALIDITY OF THE E-Way BILL

- The e-Way bill generated shall have a limited validity during which the goods have to be moved which is summarized as under:

In case of Other than over dimensional Cargo	Up to 100 Km.	1 day
	For every 100 Km. or part thereof thereafter	1 additional day
In cases of Over dimensional Cargo	Up to 20 Km.	1 day
	For every 20 Km. or part thereof thereafter	1 additional day
The E-Way bill generated shall be valid in every state and every Union territory		

- Practical Intricacies
  - The distances of all the modes of transport must be combined and considered.
  - The approximate distance in the following cases is calculated as under:
 

**In case of exports** - movement of consignment from consignor's place to the place where consignment is leaving the country after customs clearance.

**In case of imports** - movement of consignment from place where consignment reached the country to destination after clearance from customs.
- The validity of e-Way bill commences when the first entry is made in Part-B (Vehicle entry) or first transportation document number entry in rail/air/ship.
- Validity is not re-calculated for subsequent entries in Part-B.
- The maximum distance that can be entered in the e-Way bill is 3,000 kms which is expected to be increased. The portal doesn't calculate the distance based on the pincodes between the source and destination points but distance is manually entered.
- If the vehicle meets with an accident the following two

circumstances unfold-

Circumstance	Procedure
Accident within validity of e-Way bill	If vehicle is required to be changed- the person/transporter who uploaded details in PART A shall change details of PART B. e-Way shall continue to be valid.
Expiry of validity due to accident	This would count as "exceptional" in nature and the transporter may generate a fresh e-Way bill by updating details in PART B of e-Way bill

- g. Over Dimensional Cargo (ODC) shall mean cargo carried as a single indivisible unit which exceeds the limits prescribed under Rule 93 of Motor Vehicles Act, 1988. ODC is that which protrudes outside the loading deck of the vehicle transporting the cargo. Definition of ODC is to resist industry from transporting normal cargo unnecessarily as ODC for small economic benefits compromising road user's safety.
- h. The validity period can be extended by the transporter after updating the details in Part B of FORM GST EWB-01 in exceptional cases such as natural calamity, law and order issues, transshipment, delay, accident of conveyance, etc.
- i. Each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-Way bill. This is explained by the following examples-
- (i) Suppose e-Way bill is generated at 4 AM on 4th March. Then first day would end on 12 PM of 4th March and the second day would end on 12 PM of 5th March.
- (ii) Suppose e-Way bill is generated at 11:50 PM on 6th April. Then the first day would end on 12 PM of 6th April and the second day would end on 12 PM of the 7th April
- j. The details of e-Way bill generated shall be made available to supplier when the information is furnished by the recipient or the transporter. It will also be made available to recipient when the information is furnished by the supplier or the transporter. The supplier/ recipient respectively shall communicate their acceptance or rejection of the consignment within 72 hours or delivery of goods whichever is earlier.
- k. The E-Way shall not be valid unless the information in Part B of Form GST EWB-01 is furnished. After generation of E-Way bill, the unique number shall be made available to the supplier, recipient and the transporter on the common portal.

#### V. EXEMPTION FROM GENERATION OF E-Way BILL

- i) When the following goods are being transported -
- 1) Liquefied petroleum gas for supply to household and non-domestic exempted category (Non Domestic Exempted Category) customers
  - 2) Kerosene oil sold under Public Distribution System
  - 3) Postal baggage transported by Department of Posts
  - 4) Natural or cultured pearls and precious or semi-precious

stones; precious metals and metals clad with precious metal (Chapter 71)

- 5) Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
- 6) Currency
- 7) Used personal and household effects
- 8) Coral, unworked (0508) and worked coral (9601)
- ii) Where goods are transported in non-motorized conveyance
- iii) Where goods are transported from Port/ Airport/ Air cargo complex/ Land customs station to ICD/Container Freight station by the Customs department
- iv) Where goods are transported from ICD/container freight station to port/ airport/ air cargo complex/ and customs station under custom bond, or from one customs station or customs port to another customs station or customs port, or movement anywhere in India under customs supervision or under customs seal
- v) Where goods are transported in specific areas to be notified
- vi) Exempted goods (other than de-oiled cake)
- vii) Alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit, natural gas or aviation turbine fuel
- viii) Movement of goods from or to Nepal and Bhutan
- ix) Supply of goods falling under Schedule III
- x) Intra-state movement of goods, as mentioned in Notification 7/2017 (CTR) dated 28th June, 2017, from Canteen Store Department (CSD) to unit run canteen and authorized customers, and from unit run canteen to authorized customers.
- xi) Intra-state movement of heavy water and nuclear fuels, as mentioned in Notification No. 26/2017 (CTR) dated 21st September, 2018 by the Department of Atomic Energy to the Nuclear Power Corporation of India Ltd
- xii) Movement of goods caused by defense formation under Ministry of defense as a consignor or consignee.
- xiii) Where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail.
- xiv) Where empty cargo containers are being transported.
- xv) Movement of goods from place of business of consignor to weighbridge and vice-versa, where the distance is up to 20 Kms within the state (However goods in this case must be accompanied by a delivery challan)

#### VI. DOCUMENTS TO BE CARRIED BY PERSON IN CHARGE OF CONVEYANCE

- The documents and devices to be carried are as follows:
- a. Invoice, Bill of Supply or Delivery Challan
  - b. Copy of e-way bill in manual or electronic form. Carrying E-Way Bill is not applicable for movement of goods by rail or



by air or vessel. E-Way bill number mapped to a RFID device attached to a conveyance shall also suffice.

- c. The registered person may obtain Invoice reference number from common portal by uploading a tax invoice issued in Form GST INV-1 and produce the same for verification in lieu of tax invoice. Such Invoice Reference number shall be valid for 30 days from the date of uploading.
- A unique Radio Frequency Identification Device (RFID) shall be embedded on to the conveyance to map the e-Way bill to the Radio Frequency Identification Device prior to the movement of goods. The class of persons who have to get this device embedded will be notified by the Commissioner. As on date, there are no class of persons that have been notified.
- In certain circumstances, the Commissioner may notify a person in charge of the conveyance to carry the following documents instead of E-Way Bill:
  - a. Invoice or Bill of Supply or Bill of Entry
  - b. Delivery Challan where goods are transported for reasons other than supply
- The difference between Rule 55A and 138A(5) is that in the former cases, e-Way Bill is not required to be generated whereas in the latter case, e-Way Bill is required to be generated but because of the specific circumstance, the person in charge is allowed to transport goods by the Commissioner.
- Rule 55A has been inserted into CGST Rules by Notification No.3/18 CT dated.23.1.18 as per which, a person in charge of the conveyance shall carry a copy of the tax Invoice or the bill of supply in the aforesaid cases where E-Way Bill is not required to be generated.

#### VII. VERIFICATION OF DOCUMENTS AND CONVEYANCE

- The Proper Officer is permitted to intercept any conveyance to verify the E-Way bill (either in physical or electronic form) for all intra and interstate movement of goods. He is also permitted to physically verify the goods.
- The Commissioner shall get RFID Reader installed at places where verification is to be carried out. The verification of movement of vehicles on which RFID has to be installed shall be done through such readers. Thus, the e-Way Bills mapped to the RFID on the conveyances can be verified.

#### VIII. INSPECTION AND VERIFICATION OF GOODS

- A Summary Report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of Form GST EWB-03 within 24 hours of Inspection.
- The Final Report in Part B of Form GST EWB-03 shall be recorded within 3 days of such Inspection.
- Such physical verification shall be done only once during the entire journey, unless specific information relating to tax evasion is made available subsequently.

#### IX. DETENTION OF CONVEYANCE

Information regarding uploading details of a detained vehicle need to be uploaded on the common portal. Where

a vehicle has been intercepted and detained for a period exceeding 30 minutes, the transporter can upload the said information in FORM GST EWB-04 on the common portal. This acts as a deterrent for unwarranted harassment, if any be erring revenue officials.

#### X. SPECIFIED PROCEDURES

- Delivery Challan—This document is used for transportation of goods without issue of an Invoice. The consignor should issue the delivery challan in lieu of Invoice in following cases:
  - Transportation of goods for job work,
  - Transportation of goods for reasons other than by way of supply,
- Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared in Part A of EWB-01.
- Where goods are sent from one job worker to another job worker the challan may be issued either by the principal or the job worker sending goods to another job worker. The challan issued by the principal may be endorsed by the job worker. Such endorsement cannot be done in case the goods are sent by job worker on piece meal basis.
- The e-Way bill shall be generated either by the principal or by the registered job worker in case of interstate movement irrespective of consignment value. Where the job worker is not registered, the principal shall generate E-Way Bill both at the time of sending and receiving the goods.
- A. Semi Knockdown/Complete Knockdown goods:
  - Where the goods are being transported in a semi knocked down or completely knocked down condition:
    - o the supplier shall issue the complete invoice before dispatch of the first consignment
    - o the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice
    - o each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice
    - o the original copy of the invoice shall be sent along with the last consignment
  - Where the goods are being transported in a semi knocked down or completely knocked down condition then E-Way bill has to be generated for movement of each consignment against the copy of original invoice and delivery challan.
  - Such a procedure has to be followed even when the goods of a single invoice are being moved in multiple vehicles simultaneously.
- B. E-Way “Bill to” “Ship to” transactions
  - In case the transaction is “Bill to/Ship to” transaction wherein the invoice is raised by the supplier to its buyer but consignment of goods has to be made to customer on the direction of buyer. In such scenario the E-Way bill has to be raised by Supplier.

- For example, there are three parties “A” from Bangalore and B from Chennai and C from Mumbai. A (Bangalore) orders B (Chennai) to dispatch the goods directly to C (Mumbai) E-Way. It has been clarified that two tax invoices are to be generated. One between A to B and another between B to C. However, either A or B can generate the e-Way bill. It should be noted that only one e-Way bill is required to be generated as per the following procedure.

CASES	Case -1: Where e-Way Bill is generated by ‘B’, the following fields shall be filled in Part A of GST FORM EWB-01	Case -2: Where e-Way Bill is generated by ‘A’, the following fields shall be filled in Part A of GST FORM EWB-01:
Bill From:	In this field details of ‘B’ are to be filled.	In this field details of ‘A’ are to be filled.
Dispatch From:	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of ‘B’.	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of ‘B’.
Bill To:	In this field details of ‘A’ are to be filled.	In this field details of ‘C’ are to be filled.
Ship to:	In this field address of ‘C’ is to be filled.	In this field address of ‘C’ is to be filled.
Invoice Details:	Details of Invoice-1 are to be filled	Details of Invoice-2 are to be filled

- The transporter should carry E-Way bills along with copy of Invoice as raised by A to B and shipped to C. The said transaction will be an inter-State supply.
- In e-Way bill form, there are two portions under ‘TO’ section. In the left hand side “Billing To” GSTIN and trade name is entered and in the right hand side “Ship to” address of the destination of the movement is entered.
- Suppose the principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker’s place of business / premises, the invoice will be issued by the supplier (principal) located in State A to the recipient located in State C. The said transaction will be an inter-State supply. In case the recipient is also located in State A, it will be an intra-State supply. E-Way Bill must be generated by A and sent along with its invoice to the premises of job worker. The E-Way Bill so raised must be carried by transporter.
- Sometimes, the supplier prepares the bill from his business premises to consignee as per the business requirements. This is known as “Billing from” and “Dispatching From”. E-Way bill has provisions for this as well. In the e-Way bill there are two portions under ‘From’ section. In the left hand side “Bill from” suppliers GSTIN and trade name are entered and in the right hand side “Dispatch From” address of the dispatching place are entered.
- In case ship to state is different from Bill to State, the tax

components are entered as per the billing state party. That is, if the Bill to location is inter-state for the supplier, IGST is entered and if the Bill to Party location is intra-state for the supplier, the SGST and CGST are entered irrespective of movement of goods whether movement happened within state or outside the state.

#### C. Miscellaneous procedure

- EWB system has an option to enter the masters of user – client master, supplier master, transporter master and product master to avoid duplication of entering the data.
- The e-Way bill can be generated by any of the methods like Using Web based system, SMS based facility, Android App, Site-to-Site integration or Using GSP (Goods and Services Tax Suvidha Provider).
- Bulk Generation Facility is used for uploading multiple invoices and generate multiple e-Way bills at one go. It avoids duplicity and reduces errors in generation of e-Way bills. It can also be used for Updating of PART B of e-way bills and Generation of Consolidated e-way bills
- API interface is a site-to-site integration of website of taxpayer with EWB system. The EWB details are sent from taxpayer system to e-way bill system instantaneously thereby avoiding double entries, i.e., once for invoice generation in his system and second time for e-way bill generation. API is used by large taxpayers who generate more than 1,000 invoices/e-Way bills in a day. They should meet the following criteria
  - o The invoicing should be automated by IT systems
  - o The IT system should be ready to integrate with EWB system
  - o The business should be generating at least 1,000 invoices/e-Way bill a day
- The API interface by integrating the taxpayer’s system with e-way bill system enables storage of e-way bill on the taxpayer’s system itself along storage of EWB number in his/her database with the corresponding invoice. Even, in the invoice itself, EWB number can be printed so there is no need for the EWB to be carried out separately along with vehicle.

#### XI. Conclusion

Thus, it is never easy to state whether the E-Way Bill system is a boon or a bane. Nevertheless it is a cumbersome process adding to work load. It is a fact that evasion today is way beyond the e-way bill process and procedures. Time alone can tell, as to whether, in the modern world it checks evasion.



# ICAI'S CONTRIBUTION IN GST IMPLEMENTATION

## • **Representation for Non-deduction of TDS under MVAT Act after implementation of GST**

Section 142(13) of CGST Act makes it very clear that, unless issuance of bill and payments both are made before 01.07.2017 the TDS provisions under State Act would not be applicable. However, even after implementation of GST, Govt Departments like PWD & other Municipal Corporations and Local Self Govt bodies continue to deduct TDS as per the provisions of Section 31 of Maharashtra Value Added Tax Act, 2002 for the work done during the VAT period and certified at a later date after the GST is introduced. This amounts to double taxation of the same transaction and would also block such amount as amount refundable under the MVAT Act. Therefore, it has been suggested to issue necessary instructions to the Govt dept. to not to deduct Work Contract -TDS on such invoices.

## • **Representation for permitting availment of input tax credit under GST pertaining to Financial Year 2017-18 till 31st Dec, 2018**

In terms of provision of Section 16(4) of the CGST Act, 2017 the time limit for availing the input tax credit for invoices pertaining to Financial Year 2017-18 is restricted up to 20th October, 2018. Considering that Financial Year 2017-18 is the first year of implementation of GST Law and practical difficulties being faced by registered person, it has been suggested to the Government to extend the due date for claiming the input tax credit for invoices pertaining to Financial Year 2017-18 till 31st December, 2018.

- **Technical Guide on Annual return & GST Audit:** The Government has notified Form GSTR-9C on 13th September, 2018 comprising Reconciliation Statement and Certificates, which needs to be certified by the Chartered Accountants. With a view to guide the members, the ICAI has come out with a publication 'Technical Guide on Annual Return & GST Audit'. This Guide has been comprehensively designed and contains clause-by-clause analysis of Form GSTR-9, 9A and Form GSTR -9C.
- **LIVE Webcast Series on UAE VAT:** With the view to update members with the latest changes coming in the tax regime in UAE, ICAI has organised second series of paid Live Webcasts on UAE VAT from 29th October to 2nd November, 2018.
- **Live webcast series on Annual return & GST Audit:** Considering the urgent need for imparting training regarding development in GST audit an Online Training

program on Annual return and GST Audit has been organised from 2nd November to 4th November, 2018.

- **E-learning on GST:** Committee launched E-learning on GST through recorded video sessions covering almost the entire topics of GST on 7th July, 2017. This was subscribed by 2013 stakeholders and benefited out of this initiative.

Further, 2nd version of E-learning was launched for the members on 23rd January, 2018. This has been subscribed by 648 subscribers till 30th October, 2018.

- **Certificate Course on GST:** ICAI has launched its first batch of "Certificate Course on Goods and Services Tax (GST)" on 28th April, 2017 with a view to provide specialized and updated knowledge of GST in a systematic manner. Since then, more than 75 batches of the Course have been organised across the Country which have been attended by approx. 4370 members.

## • **Certificate Course on GST – through virtual classes**

Considering the humongous demand for Certificate Course on GST by members, the Committee organised virtual classes for Certificate Course on GST from 9th June, 2017 to 30th June, 2017 which was concurrently organised at 63 cities and attended by 1768 members. Further, 2nd Batch of the Course was organised from 15th December, 2017 to 14th January, 2018 at 21 Centres which was attended by 211 members.

- **Standardised PPT on GST:** The Committee has developed Standardized PPT on GST and hosted on the website with a view to provide guidance to the faculty members and bring uniformity in the session of GST in the programme as well as proving a tool to members to learn GST through PPT.
- **Training Programme for the Government:** With a view to help the Government in capacity building and partner them in Nation Building, the Committee organised 19 training programmes on GST at various Commissionerates across the Country.
- **Interactive Programme on GST for trade associations:** The committee has organised 21 interactive programmes on GST for trade association as part of its initiative towards partnering in nation building.
- **Outreach Programme on GST in association with Service Tax Commissionerate**  
The Committee has organised 4 outreach programmes on GST as knowledge partner in association with Kolkata, Delhi Commissionerate (twice) and Ahmedabad.





**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)

Secretary  
Indirect Taxes Committee  
The Institute of Chartered Accountants of India  
ICAI Bhawan, A-29, Sector - 62, NOIDA (U.P.), India  
Telephone Direct - +91 120 3045 954, Telephone Board - +91 120 3045 900 Ext. 954  
Website: <http://www.idtc.icai.org> / [idtc@icai.in](mailto:idtc@icai.in)  
for help please visit: <http://help.icai.org/>