

GOODS & SERVICES TAX / IDT UPDATE-168

1) Clarification on various issues pertaining to GST

[Circular No. 186/18/2022-GST-dt. 27.12.2022](#) has been issued to clarify as under:

S. No.	Issue	Clarification
1.	Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year (s)?	<p>As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus.</p> <p>It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.</p>
2.	Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company	<p>The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus (NCB), subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices. The pre-disclosure of NCB amount in the</p>

	to the insured?	<p>policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of section 15.</p> <p>It is, therefore, clarified that NCB is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No claim bonus mentioned on the invoice.</p>
Clarification on applicability of e-invoicing w.r.t an entity		
3.	Whether the exemption from mandatory generation of e-invoices in terms of <u>Notification No. 13/2020-CT, dated 21st March, 2020</u> , as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?	<p>In terms of <i>Notification No. 13/2020-Central Tax dated 21st March, 2020</i>, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of rule 48 of Central Goods and Services Tax Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.</p> <p>Illustration: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of <i>Notification No. 13/2020-Central Tax, dated 21st March, 2020</i>,</p>

		as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.
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2) Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016 (IBC)

As per [Circular No.134/04/2020-GST dated 23rd March, 2020](#), no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as ‘operational debt’ and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

[Circular No. 187/19/2022-GST dt. 27.12.2022](#) has been issued to clarify on the modalities for implementation of the order of the adjudicating authority under IBC, with respect to demand for recovery against such corporate debtor under the CGST Act as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC, has been issued.

As per section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

The word ‘other proceedings’ is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term ‘other proceedings’ in section 84.

Rule 161 of CGST Rules, 2017 prescribes FORM GST DRC-25 for issuing intimation for such reduction of demand specified under section 84. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25

reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

3) Manner of filing an application for refund by unregistered persons

[Circular No. 188/20/2022-GST dt. 27.12.2022](#) has been issued to prescribe the procedure for filing of refund application by an unregistered person.

In order to enable unregistered persons to file application for refund under sub-section (1) of section 54, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, and the time period for issuance of credit note has already expired, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person'. Further, sub-rule (2) of rule 89 of CGST Rules has been amended and statement 8 has been inserted in FORM GST RFD-01 vide [Notification No. 26/2022-CT dt. 26.12.2022](#) to provide for the documents required to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application.

For the purpose of determining relevant date in terms of clause (g) of Explanation (2) under section 54 of the CGST Act, date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.

No refund shall be claimed if the amount is less than one thousand rupees.

Further, in cases, where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

The complete circular giving the detailed procedure can be accessed at [Circular No. 188/20/2022-GST dt. 27.12.2022](#).

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