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Bi Monthly Magazine for Indirect Tax Professionals

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Key Articles

- Comparative Analysis of GST / VAT framework in Australia, India and Vietnam
- Overview of GST in Singapore
- Analysis of Amendments in GST
- Implications of VAT in Automotive Sector in UAE
- E-Invoice System in GST (VAT)
- VAT Refund/VAT Free Shopping for visitors to the EU
- GST Case Study
- Union Budget 2022: Know it all about GST

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From the Editor's Desk

Dear Readers,

VAT(GST), as the name suggests, is tax on value addition at every stage till the time supply gets consumed. In a way, growth trajectory of GST symbolises the GDP growth of an economy. When economists estimate growth in different sectors, growth in collection of GST(VAT) also serves as a testimonial. In India, even after three waves of COVID, the recent collections of more than INR 1,30,000/- crores on a month-to-month basis testifies that India is well-positioned to become the 5th largest economy, soon outpacing United Kingdom. At the same time, one would agree that the collection ensures availability of resources for various developmental works.

In-spite all positive aspect of collections, it is very important that the eco-system around should become a facilitator to entrepreneurship and development including manufacturing, trading or services. We also understand that global jurisdictions always aspire to collect more taxes with minimal efforts. In the backdrop of the anxiety to collect more taxes and demonstrating buoyancy at all times, these jurisdictions have introduced provisions which work contrary to ease of doing business or promoting entrepreneurship. At times, the situation forces the judiciary to take a firm stand and the executive authorities to introduce stricter measures to curb evasion of tax, which in-turn de-motivates assessees/taxpayers. There is a need to have consensus on use of strict measures in exceptional circumstances alone such that the eco-system is conducive for doing business.

There is also a need for the international community to engage in in-depth dialogue on various aspects especially the preamble of certain clauses of taxation. At times, issues like fixed establishment versus permanent establishment, definition of permanency for residential status, definition of gift, obligation to refrain from an act or even employer-employee relationship, create ambiguity not only in one jurisdiction but across the globe. Today we are living in the era of global village wherein technology facilitates service providers and entrepreneurs to think beyond territorial boundaries. Therefore, it is imperative that gradually the laws of different countries should converge towards a uniform policy, especially in cross-border transactions and where the political eco-systems are comparable.

There are global developments in terms of offering ease of doing business and reducing cost of compliance for industry. E-invoicing is one such measure which reduces the cost of compliance, time and communication cost and at the same time, the regulator gets real-time data for the purpose of monitoring. Many jurisdictions including India have adopted the E-invoicing system with hesitation, but now looking at the benefits not only are they increasing the coverage but also newer jurisdictions are adopting this measure. In addition, the eco-system around will benefit through a number of other benefits like receivable management, auto-filing of GST/ VAT Returns, and book-keeping which will mature over a period of time.

Team OMNIVAT, though started with a humble beginning, is also gathering strength with the passage of time which will be witnessed by the readers. We not only try to assimilate changes that have happened in global jurisdictions but also offer analysis of these changes which will help readers understand the rationale for such developments.

Best Wishes

CA Atul Kumar Gupta
Honorary Editor
President ICAI (2020-2021)
Board of Member of IFAC & XBRL International
B.Com (Hons.), FCA, FCMA, MIMA, CIQA, PGDEMM

INTERVIEW WITH CMA RAKESH K JAIN

Director (Finance)
GAIL (India) Limited

Shri Rakesh Kumar Jain is a Cost and Management Accountant by profession, Shri Jain joined GAIL in 1992 as a Management Trainee and has been part of growth trajectory of the company. Prior to his appointment as Director (Finance), Shri Jain held the position of Executive Director (Finance & Accounts) in GAIL. Additionally, Shri Jain holds the position of Director in Indraprastha Gas Limited, GAIL Gas Limited, GAIL Global (USA) Inc. and GAIL Global (USA) LNG LLC. Earlier he was on the Board of Ratnagiri Gas and Power Pvt. Ltd (RGPPL). As Executive Director (Finance & Accounts), he headed Corporate Finance and Treasury section in large mobilisation of funds from domestic and international markets and took investment decisions in large infrastructure projects. He was also actively involved in Investor relations and interactions with Analysts fraternity. Shri Jain has worked in the areas of Corporate Finance and Treasury including Forex Risk Management, Capital Budgeting, Corporate Budgets, Corporate Accounts, Finalization of Long Term international LNG and Gas Agreements, Pricing, Liquefaction and Regasification Terminal Service Agreement, Mergers & Acquisitions, Taxation, Regulatory aspects etc. Besides serving a long tenure at GAIL, he was on deputation to Petroleum and Natural Gas Regulatory Board (PNGRB), as Jt. Director (Commercial and Finance). During his stint at PNGRB, he was actively engaged in the review of tariff regulations, conceptualization of unified tariff, authorization of CGD 9th & 10th bidding rounds, finance functions etc. He has also worked in almost all business verticals of GAIL including GAIL's largest Petrochemical plant at Pata.

1. How do you see the progress of GST in India as a catalyst for economic development of the country?

GST is the biggest tax reform in the history of independent India. It is the single biggest indirect tax regime, dismantling all the inter-state barriers with respect to trade. The GST rollout, with a single stroke, has converted India into a unified market of 1.3 billion citizens and contributed in reaching the level of GDP of $3-trillion in 2021-22 and crossing the market cap of $3-trillion mark .

The GST regime is aligned with overall objectives of removing the cascading effect, unifying the Indian market, simplifying administration and ease of doing business. Uniformity in compliances with ease in doing business has acted as a catalyst for economic growth and sustainable development in India. The same is evident from how it has benefited the supply chain network of organizations.

In the pre-GST days, companies had adopted a decentralized supply chain model whereby multiple warehouses were located in different states, to avoid tax leakage from the direct inter-state sale of goods. GST has brought centralized supply in the value chain, thus resulting in substantial savings in logistics and distribution costs.

Summing up, I can say that GST is assisting in economic transformation, by doing away with the internal tariff barriers and subsuming central, state and local taxes into a unified GST. The rollout has renewed the hope of India's fiscal reform program, which is regaining momentum and widening the economy in spite of problems posed by ongoing crisis due to pandemic.

2. Do you agree with the slogan "One Nation, One Tax"? Any suggestion you would like to offer to achieve that.

The main objective of GST has been to replace multiple taxes with a uniform tax on supply chain of goods and services. It has successfully subsumed different types of Central and State levies, which had multiple compliance requirements.

However, the concept of "One Nation, One Tax" needs to be further strengthened by bringing the petroleum good within the ambit of GST. Nevertheless, even without including petroleum goods under GST, we have taken the right steps and have largely achieved this objective.

One Tax does not necessarily mean a single rate of tax; it can also be understood as uniform tax across nation. GST has brought uniformity in compliances and tax rates. There are multiple tax slabs in GST, but a product is uniformly taxed across the nation, which has converted India into a unified market.

Assisted by simpler movement of goods, standardization in documentation requirements and availability of all information online, I would rather rephrase the slogan as "One Nation, One Tax & One Market".

3. At times, we find that there are lots of notification/circular issued time and again. Stakeholders find it very difficult to keep track of changes. Your comments please.

GST has brought about a radical change in the Taxation Architecture, and as any new law, GST law is also evolving. It is true that there have been frequent changes in law and at times it gets difficult to track the notifications/circulars. However, one more aspect that cannot be ignored is that the government is listening to industry issues and quickly coming up with needful changes.

It is true that a large part of the circulars or notifications being issued are addressing industries' concern. So, though it has been difficult to keep track of the frequent changes but simultaneously it has resolved many industry issues.

4. How do you see the recent talks around the single rate of GST in the country on the similar lines as many other developed countries?

India is a complex and diverse society with huge income variations, the idea of a tax rate that is the same for every product, whether consumed by the rich or poor, is not good from the point of view of equity. A standard or unified GST rate may not be conducive as it will increase the incidence of taxation on articles consumed by the common man, while the rate of tax on luxuries will fall. Such a scenario may be unfavorable for the population living in rural areas who will pay the same rate of tax on all commodities – including articles of daily consumption.

However, on the positive side, a unified GST rate may ease administrative bottlenecks and help in a seamless assessment as it would eliminate the issues pertaining to the multiple slabs and will reduce

litigation. However, the drawbacks heavily outweigh the benefits.

In addition, if we push for a single rate of GST, then it may be difficult to bring petroleum products under GST, as it may lead to charging a very high rate of tax on all products to compensate for the loss of present tax revenue on petroleum products.

5. What are the steps your company has taken to ensure smooth role out of GST and to keep the team updated about various amendments coming in GST?

In our company, GST roll out had been smooth, as we had timely planned the activities to be done for ensuring the same.

For ensuring the same, firstly, an impact assessment on all our business processes was done. All the transactions that were being undertaken in the organization that could have a possible GST implication were identified and the tax implication on those transactions were analyzed.

In addition, appropriate re-modelling of business processes and IT developments were also carried out.

Lastly, for ensuring the smooth transition, adequate capacity-building exercise and awareness session including extensive training was given to employees. In addition, a number of awareness sessions and workshops were conducted at various sites of the company to educate and guide various stakeholders during GST implementation.

6. Since Budget 2022 is on the cards, any suggestions from your side to improve the overall eco-system of GST in India?

The GST law and system are now stabilized to a great extent. But, like any system of this size and complexity, it needs constant improvements. The Government has been receptive to industry concerns and has been actively introducing new reform measures that are technology led, in line with the country's Digital India initiative.

However, one aspect that may have a significant impact on the overall eco-system is inclusion of Petroleum products under GST. It may help in realizing the ultimate goal of 'One Nation-One Tax'. As more than four years are completed since the roll-out of GST, Government may now gradually start bringing petroleum products under GST. Natural Gas can be one such product to start with, as Natural Gas does not have a significant share in total indirect tax revenue as well as in the tax contribution of other Petroleum products to Central and State exchequer. Thus, it will not significantly impact Government exchequer if Natural Gas is brought under GST.

In case it is not possible to bring Natural Gas under GST regime at this stage, the State governments need to rationalize VAT rate applicable on Natural Gas to promote usage of Natural Gas in industry to fulfill the vision of PM for gas based economy with larger share of Natural Gas in India's energy basket considering its environmental benefits.

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Comparative Analysis of GST/VAT Framework in Australia, India and Vietnam

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Executive Summary

In today's world, businesses are traversing beyond regional boundaries and are not confined to fixed boundaries. Hence, in order to manage the effects of indirect taxes on the business and to plan the indirect tax strategy, a holistic perspective of the taxation structure along with the local country rules is required. In this article, a comparative study of the Indirect tax regime in 3 Asia Pacific countries (Australia, India, and Vietnam) is being undertaken.

Introduction and Purpose

"No matter how much experience you have, there's always something new you can learn..." This quote is not only true for an individual, but also to a country as a whole. Learnings of the impact of a particular tax structure like Goods and Services Tax can create, may be ascertained by studying the impact that other countries had, upon implementation of similar taxation systems earlier.

Asia-Pacific comprises of countries with different economic, regulatory as well as tax environments.

This article does not aim to comprehensively discuss all the aspects of the Goods and Services Tax / Value added tax legislation of the 3 select countries of Australia, India, and Vietnam; but focus only on some of the important facets. At the end of every sub-topic, a sincere attempt has been made to highlight the key differences and key similarities between the GST / VAT framework in each country.

1. Taxable event:

a) Australia

Taxable event in Australian GST is sale / supply. Such sale / supply includes sale or supply of goods or services or real property.

i. Goods are defined as any form of tangible personal property.

ii. Services are not defined in GST law. But generally, it includes intangible supplies such as various forms of rights and options.

iii. Real Property includes any interest in or right over land, or a personal right to call for or be granted any interest in or right over land, or a licence to occupy land or any other contractual right exercisable over or in relation to land. Characteristics to be satisfied for a transaction to qualify as a sale / supply:

i. There should be payment in some kind in return: The consideration can either be monetary / barter transaction or in the form of refraining from doing anything

ii. It should be made in the course of operating the business: It includes things done in the course of setting up or winding down the business .

iii. It should be connected with Australia:

   a. Goods are said to be connected with Australia if they are delivered or made available to purchaser in Australia or removed from Australia or brought to Australia .

   b. Services are said to be connected with Australia if they are done in Australia or provided through a business in Australia or if the purchaser is an Australian customer or if the right or option to purchase something is connected with Australia.

   c. Real property is said to be connected with Australia if the property is in Australia.

b) India

Taxable event in Indian GST is supply. Such supply includes supply of goods and/or services.

i. Goods means every kind of movable property other than money or securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply .

ii. Services means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Characteristics to be satisfied for a transaction to qualify as a supply:

i. The term 'supply' includes all forms such as sale, barter, exchange, license, rental, lease, or disposal

ii. The supply should have been already made or agreed to have been made

iii. It should be made for a consideration. Such consideration can be in cash or in kind. However, there are certain exceptions to the condition of consideration. Transactions specified in Schedule 1 to Central Goods and Services Tax Act, 2017 qualify as a supply even without consideration.

iv. The supply should be made in the course or furtherance of business.

c) Vietnam

Any goods and services used for purpose of production, trading and consumption in Vietnam are subject to Value Added Tax in Vietnam. Organisations and individuals producing or trading in VAT liable goods or services in Vietnam, regardless of their business lines, forms and/or organisations are liable to VAT. Organisations and individuals importing goods or purchasing services liable to VAT from abroad.

Also goods and services (including those purchased from outside or produced by business establishments themselves) which are used for barter, presentation as gifts, donation or payment of salaries are subject to VAT. In such barter transactions, taxed price is the price of goods or services of same / similar type at the time such activities are carried out.

Taxable event is supply in case of Australia and India. Though the taxable event in case of Vietnam VAT is

sale, with respect to Vietnam VAT framework, it is a comprehensive term including transactions like barter, exchange, lease, license, etc.

However, the key difference to highlight in case of India and Vietnam is the subject matter that is being taxed is goods and services. Whereas in case of Australia, the subject matter that is being taxed is goods, services, and real property.

2. Threshold limit for Registration:

a) Australia:

Before understanding the threshold limit for registration, it is worthwhile for us to note the meaning of the terms 'Entity' and 'Enterprise'. 'Entity' is defined to include an individual, partnership, trust, company, and unincorporated associations.

'Enterprise' is defined in GST law to include among other things, an activity in the form of a business,

i. an activity undertaken by a charitable body, religious institution or government, or

ii. an activity undertaken on a regular or continuous basis in the form of a lease, licence, or other interest in property.

Registration is mandatory in the following cases and it is required to be taken within 21 days after becoming eligible to be registered:

i. Entities carrying on an Enterprise (other than non-profit bodies), with Annual Australian Turnover equal to or exceeding AUD $ 75,000 of non-exempt supplies over a rolling previous and future 12-month period.

ii. Enterprises operating as a non-profit organisation having a GST turnover equal to or exceeding AUD $ 1,50,000 of non-exempt supplies over a rolling previous and future 12-month period.

iii. Regardless of turnover, owner, drivers and lessors/rent providers of taxi or limousine travel for passengers (including ride-sourcing).

iv. Business or enterprise wanting to claim fuel tax credits. Fuel tax credits are Excise / Customs Duty included in fuel price used in machinery, plant, equipment, heavy vehicles, light vehicles travelling on public roads or on private roads.

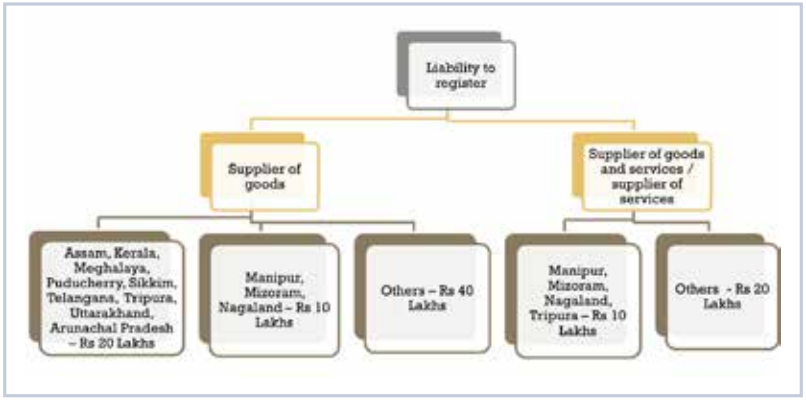
Voluntary registration is allowed in case of entity carrying on Enterprise, even if its aggregate turnover does not exceed the threshold limit.

b) India:

Threshold limit applicable for registration under Indian Goods and Services Tax varies depending on the following variables:

1. States / Union Territories from where the supply is taking place.
2. Supply undertaken by the supplier, whether exclusively supplier of goods or supplier of both goods and services or exclusively supplier of services.

Figure: 1



Other than the requirement of threshold limit, there are certain cases where compulsory registration is mandatory, which are as follows:

a) persons making any inter-State taxable supply;

b) casual taxable persons making taxable supply;

c) persons who are required to pay tax under reverse charge;

d) persons who are required to pay tax under sub-section (5) of section 9;

e) non-resident taxable persons making taxable supply;

f) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;

g) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

h) Input Service Distributor, whether or not separately registered under this Act;

i) persons who supply goods or services or both, other than supplies specified under sub- section

(5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

j) every electronic commerce operator who is required to collect tax at source under section 52;

k) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and

l) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Registration is required to be taken by the person within 30 days from the date of becoming liable.

c) Vietnam:

There is no minimum threshold limit for registration under Vietnam Value added Tax. All organisations, households and individuals carrying out business and production activities and providing services must have a tax registration.

For certain types of enterprises (such as limited liability, partnership, and private enterprises), the tax and enterprise registration has been combined and must be made with the licensing authorities. In other words, no separate tax registration is required for these enterprises. For other types of economic organisations (such as enterprises operating in securities, insurance, accounting, auditing, lawyers, pecialized or other pecialized sectors which do not register tax with licensing authorities), a separate tax registration with the tax authorities is still required.

There is a common threshold limit for registration in case of Indian GST unlike Australian GST for enterprises operating as non-profit bodies and profit bodies. Whereas there is no minimum threshold limit for registration in case of Vietnam VAT. All enterprises are liable for registration. In case of Indian GST, threshold limit varies based on the State from which the supply is made and whether it is a supply of good / supply of service.

3. GST GROUP:

a) Australia

What is a GST group?:

A GST group is two or more associated business entities that operate as a single business for GST purposes. One member of the group (the 'representative member') completes activity statements and accounts for GST on behalf of the whole group.

Eligibility to form a GST group:

Companies, trusts and partnerships with common ownership or membership may operate as a group. Individuals, or family members of individuals, associated with these entities may also be part of a GST group. However, a GST group 'cannot consist solely of individuals.

To form a GST group each member must:

b. be registered under GST

ii. have the same tax period as all the other members of the proposed GST group

iii. Account for GST on the same basis (that is, cash or non-cash) as all the other members of the proposed GST group. Adoption of cash basis of accounting is based on satisfaction of certain conditions and only certain persons are eligible (refer time of supply section).

iv. not belong to any other GST group

v. have no branches for GST purposes

vi. satisfy the requirements and regulations that apply to that particular type of entity.

In case of addition or removal of members from the group, the representative member shall notify the Australian Taxation Office through a form titled 'GST group – notification of forming, changing or cancelling'.

Benefits of being a member of GST group:

1. Transactions within the group is ignored for GST purposes. Hence to that effect, there are saved cashflows. Additionally, there is no invoice requirement for tax purposes for transactions within the group.
2. One member of the group is to be appointed as Representative Member (RM).
3. Rights and Responsibilities of RM on behalf of the group:
   a. Completion of Activity Statement
   b. Pay taxes
   c. Claim GST credits

RM must be an Australian resident for tax purposes. Other members do 'not need to be Australian residents for tax purposes.

Though RM is generally responsible for paying GST and claiming GST credits, the members of a GST group are jointly and separately responsible for any amount the RM is liable to pay. However, members of a GST group can enter into an Indirect Tax Sharing Agreement with the RM of the group to limit their liability for the RM's indirect tax liability.

b) India

There is no concept of GST group in Indian Goods and Servicves Tax.

c) Vietnam

There is no concept of GST group under Vietnam Value added Tax.

Benefit of registering and operating as a GST group is available only in Australian GST and not in other countries.

4. Time of Supply:

Time of supply fixes the point when the liability to pay tax arises. The time of supply is not a fact to be inquired by a taxable person, but it is the will of the legislature. Hence one does not have an option.

b) Australia

With respect to Australian GST, time of supply provisions with respect to Goods, Services, Real Property are common. The time of supply provisions is based on the method of accounting. If the enterprise is following the cash accounting method, time of supply is the date on which the consideration is received.

If the enterprise is following the non-cash accounting method, earlier of receipt of consideration or issue of invoice will be treated as the time of supply.

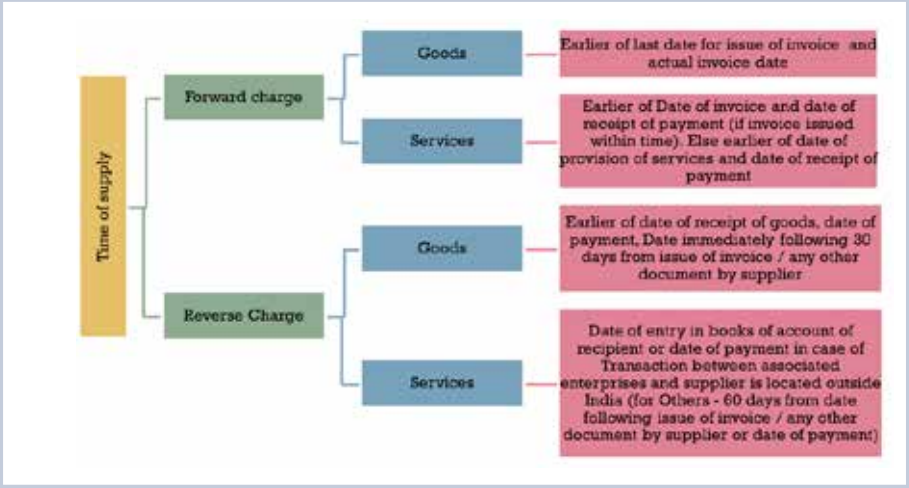
However, it is important to understand that the cash accounting method can be used only in the following scenarios:

b. In case of small business entity (Individual / Partnership, Trust, or company), Aggregate Turnover should not exceed 10 million AUD
2. If an enterprise is not carrying on business, Aggregate turnover should not exceed 2 million AUD
3. If the accounting for income tax is on cash basis
4. Regardless of turnover, if the taxable person is any of the following:
   - A Government School
   - Endorsed charitable institution / trustee of endorsed charitable fund
   - gift deductible entity unless it operates a fund, authority or institution that can receive tax deductible gifts or contributions.

b) India

Time of supply provisions is different for goods and services. Following chart depicts the same:

Figure 2:



c) Vietnam

In case of Vietnam VAT, time of supply provisions are different for goods and services. And it is different for domestic supply and import transactions.

Domestic supply:

1. Goods: ime of supply in case of domestic supply of goods is the date on which the right of ownership is transferred /the date of transfer of use of goods to purchaser.
2. Services: Time of supply in case of domestic supply of services is the date of completion of provision of service or when the invoice is issued.

Imports:

1. Goods: The time of supply in case of import of goods is the time when the import duty is paid.
2. Services: Value Added Tax is automatically levied via withholding tax in case of import of services.

The point at which tax becomes payable in case of a particular transaction is determined by time of supply provisions. There is no distinction between time of supply for goods, services and real property in case of Australian GST. Whereas a clear distinction is drawn for time of supply between goods and services in case of Indian GST and Vietnam VAT.

5. Place of Supply:

Place of supply is generally the place of delivery of goods or consumption of service.

a) Australia:

We already saw that the supply should be connected with Australia in order to qualify as a supply liable to Australian GST. In short, the place of delivery of goods or consumption of service should be connected with Australia.

Goods are said to be connected with Australia if it satisfies any of the following criteria:

i. Goods delivered or made available in indirect tax zone i.e., Australia, not including external territories and certain offshore areas.

ii. Goods removed from indirect tax zone.

iii. Goods brought to indirect tax zone and

   1. Imported into the indirect tax zone by the supplier, or
   2. Installed or assembled in the indirect tax zone by the supplier.

Services are said to be connected with Australia if it satisfies any of the following criteria:

i. Supply is made in indirect tax zone.

ii. Supply is made through an enterprise carried on in indirect tax zone.

iii. Supply is of a right or option which would be connected with indirect tax zone.

   Real Property will be connected with indirect tax zone if the real property or the land to which the real property relates is in indirect tax zone.

b) India

In Indian GST, place of supply provisions gain extra prominence because of the need to determine nature of supply for each transaction.

There are 28 States and 8 Union Territories in the country. Every State and Union Territory is compartmentalised and if the supply happens within the State/Union Territory, the supply is termed as 'Intra State Supply'. If the supply happens between the States / Union Territories, it is termed as 'Inter State Supply'.

Detailed provisions for place of supply are made in each of the following categories:

1. Place of supply of goods other than supply of goods imported into, or exported from India
2. Place of supply of goods imported into, or exported from India
3. Place of supply of services where location of supplier and recipient is in India 4. Place of supply of services where location of supplier or location of recipient is outside India

c) Vietnam

There is no specific definition of place of supply in Vietnam. It is a common assumption for all transactions that the place where the goods or services are consumed is treated as a place of supply. However, certain services including advertising and hotel management services, tourism and entertainment and other related activities remain subject to VAT

VAT on exported services still remains a highly contentious issue and a proper clarification from the Government is much needed in this regard.

Place of supply provisions in case of Australian GST is used to identify whether the transactions are connected with Australia. The use of place of supply provisions in case of Indian GST is to identify the nature of supply i.e., whether the transaction is an Intra-state supply or an Inter-state supply. No clear place of supply provisions is provided in law in Vietnam, therefore identifying transactions connected with Vietnam is a challenge in certain situations.

6. Input tax credit:

Tax paid on inputs used for making output supplies can be taken as credit upon paying output tax. This is the main advantage that taxpayers take into consideration while planning their cashflows and profits.

a) Australia

All taxpayers in order to take the benefit of input tax credit under Australian GST must satisfy all of the following conditions:

1. The purchase has been made with an intention to use the purchases solely / partly for business.

2. Purchase price includes the component of GST.
3. Payment / liability to make the payment, for the item purchased has been made.
4. Possession of tax invoice from the supplier in case of purchases of more than AUD 82.50. For purchases not exceeding AUD 82.50, document possessed can either be a tax invoice / a cash register docket / a receipt / an invoice / a diary entry with name and Australian Business Number (ABN) of supplier, date of purchase, description of items purchased, amount paid.

Every person availing input tax credit shall before claiming GST credits ensure that the supplier is registered. This can be done by searching for the information at the website https://abr.business.gov.au/.

There are certain expenses for which tax paid on those, though satisfying the above conditions, cannot be taken as a credit. To name a few:

1. Tax paid on expenses which are meant for private/ domestic purpose.
2. Purchases for which income tax deduction cannot be claimed (e.g. entertainment).
3. Maximum time limit for claiming GST credit is 4 years. Tax paid on inputs exceeding the time limit cannot be availed as credit.
4. Purchase price of a car that is over the car limit amount for the relevant Financial Year (FY) (e.g.

FY 2021-22, the limit is AUD 60733). If the car purchase is more than the car limit, the maximum amount of GST credit that can be claimed is one-eleventh of that limit.

b) India

Following are the conditions that must be satisfied by a taxpayer in order to avail input tax credit:

1. Possession of tax invoice/debit note issued by the registered supplier;
2. The details of the invoice or debit note has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under Section 37. This provision is still not notified. However, if it is notified then in case of transactions where there is a genuine buyer and a bogus seller, the

genuine buyer suffers without the benefit to input tax credit;

3. Goods/services/both should have been received;
4. The tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
5. Returns under Section 39 should have been furnished.

Maximum time limit for claiming GST credits is earlier of:

1. due date of furnishing of the GST returns under Section 39 of the CGST Act, 2017 i.e., GSTR-3B for the month of September following the end of financial year to which such invoice or debit note pertains or
2. furnishing of the relevant annual return.

There is a huge list of ineligible credits provided for Section 17(5) of the CGST Act, 2017. It includes tax paid on purchase and related services of motor vehicle which has a seating capacity of not more than 13 persons, vessels, aircrafts except when used for specific purposes, club membership, health and fitness centre, works contract service, goods or services used for personal consumption, etc.

c) Vietnam

Conditions for eligibility to take input tax credit under Vietnam VAT are as follows:

1. Possession of tax invoice/debit note issued by the registered supplier. E-invoice provisions are being mandated effective 1 July 2022.
2. In case of purchases > 20 Million VND, evidence of non-cash payment should be produced.
3. In case of purchases used for both VATable sales and exempt sales
    i. Proper records to be maintained to identify the purchases used for VATable sales and exempt sales separately.
    ii. In case of non-maintenance, following formula should be used to compute the allowable input tax credit. Total Input VAT * VATable Sales excluding GST /(VATable sales+exempt sales)

Maximum time limit for claiming GST credits is any time before the tax authorities announce the decision of a tax audit/ inspection.

Following are the ineligible input tax credits under Vietnam VAT:

a) Food and beverage expenses for employees (snack, soft drink, moon cake).
b) House rental fees for employees who have signed labor contracts with the company.
c) Expenses paid in cash with the value of more than VND20 million.

In case of Australian GST, possession of invoice is not mandatory in case of low invoice values, i.e., where invoice value is less than AUD 82.50. There is no such incentive provided in case of Indian GST and Vietnam VAT. Unlike Vietnam VAT and Australian GST, one of the conditions to avail input tax credit by the recipient in case of Indian GST, is an action required by the supplier.

7. Returns

a) Australia

1. Monthly return filing shall be made by entities with an aggregate

turnover equals to or exceeds AUD 20 Million.

2. Quarterly filing can be made by entities whose aggregate turnover does not exceed AUD 20 Million. However, such entities may elect to file monthly returns.
3. Option is given to entities whose aggregate turnover does not exceed AUD 2 million to file returns once in a year i.e., annual return. However, instalment amount of notional GST amounts shall be paid quarterly.
4. In case of taxpayers who have opted for voluntary registration and whose aggregate turnover is below AUD 75000, returns and payment shall be annual i.e., once in a year.

b) India

Small taxpayers whose aggregate annual turnover in the preceding Financial Year is less than Rs 5 crores are permitted to file GSTR-3B (Summary return) quarterly and pay tax every month.

Due date of filing GSTR-3B is either 22nd / 24th of the month succeeding such quarter based on which State/Union Territory the taxable person has taken the GST registration in.

In other cases, the return filing is monthly. With respect to supplies made during every month, return

filing and tax payment shall be made by the 20th of the following month.

Apart from this, except for certain categories of persons, a return on outward supplies under GSTR-1 shall be filed.

In addition to return on outward supplies under GSTR-1 and summary return under GSTR-3B, every registered person except certain categories of persons shall file an annual return. It is due by 31st December of the year following the relevant financial year. It is optional for taxpayers with turnover less than or equal to Rs 2 Crores.

c) Vietnam

If the taxpayer's annual revenue is 50 billion VND or more, then tax return filing and payment is monthly. Such monthly return filing relating to every month shall be made by the 20th of the following month.

If the taxpayer's annual revenue is less than 50 billion VND, then tax return filing and payment is quarterly. Such quarterly return filing relating to every quarter shall be made by 30th of the month following the end of the quarter.

Monthly or quarterly return filing requirements are common in all the 3 Countries. However, in Indian GST, filing an Annual return is a requirement in addition to the monthly or quarterly filing.

8. Retention period of records:

a) Australia

For the purposes of GST, records shall be maintained for a period of 5 years starting from later of the following:

1. Date of preparation or obtaining the records, or
2. Date of completion of the transaction or acts to which those records relate to.

Records can be kept solely in electronic form. It must be in a form convertible in English, capable of being retrieved and read during retention period.

b) India

Every registered taxable person must maintain the books of accounts and records for at least 72 months (6 years). The period will be counted from the last date of filing of Annual Return for that year.

Businesses are required to maintain various accounts and records for ready verification by an authorised GST Authority either in electronic or physical format. The taxable persons are allowed to maintain records in electronic form authenticated by a digital signature.

c) Vietnam

Daily accounting records (e.g., payment vouchers, receipt vouchers, etc.) have to be kept for at least 5 years. Audit reports and financial statements (monthly/quarterly/annual) have to be kept for at least 10 years. Documents, which the entity deems to be of importance have to be kept perpetually and cannot be discarded.

Records cannot be kept solely in electronic form except e-invoices and certain e-tax documents (Circular 110/2015). Paper copies must still be kept.

All records are required to be retained for a period of 5 years and 6 years in case of Australian GST and Indian GST respectively. However, retention period for daily accounting records and audit reports is distinguished in case of Vietnam VAT.

As already stated in the introduction, the above comparative analysis of the provisions is not exhaustive but an earnest attempt has been made to highlight certain important provisions.

Though every country has framed its laws based on careful deliberations by its experts, through the comparative analysis made above, the following can be observed as best practices that can be adopted in general.

1. Varied threshold limit for registration based on whether it is a profit body or a non-profit body and not based on the subject matter of supply i.e., whether it is a good or service or real property (Suggested Model for other countries: Australian GST).
2. Option to register and report as a 'GST group' for administrative convenience and cash flow savings for transactions between the entities in GST group. (Suggested Model for other countries: Australian GST).
3. Detailed transaction-wise time of supply provisions help reduces ambiguity. (Suggested Model for other countries: Indian GST).
4. Clear place of supply provisions to help identify the transactions connected with the taxable territory is necessary. Requiring the taxpayers to identify the nature of supply and making them pay the correct terminology of tax based on whether it

is a Intrastate Supply or an Interstate Supply, is passing on the administrative work of revenue sharing between the Centre and the States to the taxpayers. (Suggested Model for other countries: Australian GST).

5. Requirement of tax invoices for low value items can be done away with based on the principle of materiality. (Suggested Model for other countries: Australian GST).
6. The recipient has control over the suppliers only to the extent of business relationship. Hence condition for availing input tax credit by the recipient cannot be an action to be fulfilled by the supplier. At best, the recipient can verify whether a supplier is registered under GST. (Suggested Model for other countries: Australian GST).
7. Requirement of filing annual returns should be the criteria. In case of Indian GST, there is a repetitive exercise in the form of annual return filing that needs to be carried out by the taxpayers in addition to monthly/quarterly filing. (Suggested Model for other countries: Australian GST / Vietnam VAT).
8. Key documents can be retained for a longer period as against the requirement of maintaining the daily transaction records. The learning that can be gained here is not on the number of years, but on the materiality assigned for the nature of records. (Suggested Model for other countries: Vietnam VAT).

"Life is a process of self-discovery, and no experience is ever wasted. It only brings us closer to our evolution." An individual or a country need not necessarily evolve only through its own trial and error. Other's experience can also be of immense learning. Such comparison of similarly placed laws of various countries helps us understand where things can be further improved.

Overview of GST in Singapore

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Goods and Services Tax or GST is a broad-based consumption tax levied on the import of goods (collected by Singapore Customs), as well as nearly all supplies of goods and services in Singapore. In other countries, GST is known as the Value-Added Tax or VAT. The current GST rate in Singapore is 7 percent.

A 2% rate hike from 7% to 9% is planned to be introduced sometime between 2021 and 2025, depending on Singapore's economy, government spending and revenue from other taxes.

GST Registration

All Singapore companies must register for GST if their annual taxable revenue is more than S$1 million, or if their current taxable income and annual taxable revenue is expected to be more than S$1 million. The business must register for GST within thirty days from the time it is deemed liable.

Failure to register with IRAS within the stipulated timeframe will result in penalties. There are anti-avoidance provisions to ensure that entities are not established merely to keep turnovers less than the threshold and thereby avoid registration.

One may also choose to voluntarily register for GST. Approval for voluntary registration is at the discretion

of the IRAS Comptroller. Once approval is given, one must remain registered for at least two years and comply with the GST regulations, filing the GST return on time on a quarterly basis and maintain all records for at least five years, even after the business has ceased and one has de-registered from GST. There could be a need to comply with any additional conditions that are imposed by the tax authority.

GST REGISTRATION PROCEDURE

A Singapore Goods and Services registration form (GST F1) along with the necessary supporting documents must be sent to the tax authority. An additional form (GST F3), giving details of all the partners must be completed, in the case of partnerships.

Separate application procedures/forms are available for overseas companies, group registration and divisional registration. Overseas registrants are expected to appoint a local agent who will act on its behalf and they must include a letter, along with the application form, stating the same.

The registration process takes approximately 3 weeks. Upon successful GST registration, a Notification of GST Registration letter containing GST number, mention of the effective date of GST registered business, filing frequency and filing due dates as well as any other special instructions would be received by the business owner. GST returns are filed electronically.

CHARGING AND COLLECTING GST

Once registered for GST, all invoices for supplies/ services shall be charged at the prevailing rate. This GST that is charged and collected is known as output tax. ***Output tax*** must be paid to IRAS.

The GST that are incurred on business purchases and expenses (including import of goods) is known as input tax. If the business satisfies the conditions for claiming input tax, the ***input tax*** on business purchases and expenses can be claimed as credit.

This input tax credit mechanism ensures that only the value added is taxed at each stage of a supply chain.

Non–GST registered businesses are not allowed to charge GST. It is an offence to charge and collect GST by a non-GST registered business.

TYPES OF SUPPLIES

Generally, there are 4 types of supplies in Singapore

1. ***Standard-Rated Supplies (7% * GST)***
   Most local sales of goods and services fall under this category.
2. ***Zero-Rated Supplies (0% GST)***
   Export of goods and Services that are classified as international service.
3. ***Exempt Supplies (GST is not applicable)***
   - Sale and rental of unfurnished residential property.
   - Importation and local supply of investment precious metals.
   - Financial services.
4. ***Out-of-Scope Supplies (GST is not applicable)***
   - Sale where goods are delivered from overseas to another place overseas.
   - Private transactions.

* A 2% rate hike from 7% to 9% is planned to be introduced sometime between 2021 and 2025, depending on Singapore's economy, government spending and revenue from other taxes.

TAXABLE AND NON-TAXABLE GOODS AND SERVICES[1]

Taxable supplies

Type	Standard-Rated Supplies (7% GST)	Zero-Rated Supplies (0% GST)
Goods	Most local sales fall under this category. E.g. sale of TV set in a Singapore retail shop Imports of low-value goods (from 1 Jan 2023)	Export of goods E.g. sale of laptop to an overseas customer, where the laptop is shipped to an overseas address
Services	Most local provision of services fall under this category. E.g. provision of spa services to a customer in Singapore Imported Services	Services that are classified as international services E.g. air ticket from Singapore to Thailand (international transportation service)

Non-Taxable supplies

Type	Exempt supplies (GST is not applicable)	Out-of-scope Supplies (0% GST)
Goods	Sale and rental of unfurnished residential property Importation and local supply of investment precious metals	Sale where goods are delivered from overseas to another place overseas Private transactions See Out-of-scope supplies for more information.
Services	Financial services E.g. issue of a debt security Digital payment tokens (from 1 Jan 2020) E.g. exchange of Bitcoin for fiat currency	Private transactions. See Out-of-scope supplies for more information.

COMMON REASONS FOR DENYING AN INPUT CREDIT

a. Missing details in the invoice

- The supplier's name, address and GST registration number are not shown.
- For purchases >S$1,000, the words "tax invoice", name of customer or GST amount is not shown.
- For purchases ≤ S$1,000, the GST amount or a statement similar to "price payable includes GST" is not shown.
- For purchases in foreign currency, the Singapore dollar equivalent amounts are not shown.

b. Supplier is not a GST registered

c. Falls under the prohibited items prescribed in Regulations 26 and 27 of the GST (General) Regulations

- Benefits provided to the family members or relatives of the staff;
- Costs and running expenses incurred on motor cars that are either:

i. registered under the business' or individual's name, or

ii. hired for business or private use.

c. Club subscription fees (including transfer fees) charged by sports and recreation clubs;

[1]https://www.iras.gov.sg/taxes/goods-services-tax-(gst)/basics-of-gst/goods-and-services-tax-(gst)-what-it-is-and-how-it-works

d. Medical expenses incurred for staff unless:

   i. the expenses are obligatory under the Work Injury Compensation Act or under any collective agreement within the meaning of the Industrial Relations Act; or

   ii. the medical treatment in respect of expenses incurred on or after 1 Oct 2021 is provided in connection with any health risk or requirement arising on account of the nature of the work required for staff or their work environment; and

   iii. the medical expenses are incurred pursuant to any written law of Singapore concerning the medical treatment or the provision of a medical facility or medical practitioner; or

   iv. the medical treatment is related to COVID-19 and the staff undergoes such medical treatment pursuant to any written advisory (including industry circular) issued by, or posted on the website of, the Government or a public authority.

e. Medical and accident insurance premiums incurred for the staff unless the insurance or payment of compensation is obligatory under the Work Injury Compensation Act or under any collective agreement within the meaning of the Industrial Relations Act; and

f. Any transaction involving betting, sweepstakes, lotteries, fruit machines or games of chance.

GST RETURNS FILING PROCESS

The return of GST is filed (GST F5) with the tax authorities normally on a quarterly basis. The return details

- Total value of local sales,
- Exports,
- Purchases from GST registered entities,
- GST collected and GST claimed for that accounting period.

GST Returns are filed electronically. Once an e-filing is done, the next GST return is made available online by the end of each accounting period. The e-filing of GST F5 can be made one day after the end of the accounting period. It needs to be ensured that IRAS receives the return not later than one month after the end of the prescribed accounting period.

If there is no tax due for the said period, a 'nil' return needs to be submitted. Penalties are imposed if the GST return if filed late. This is regardless of whether the net GST declared is a payable or refundable amount. GST refunds will usually be made within 30 days from the date of receipt of the return.

TIME OF SUPPLY RULES (EFFECTIVE 1 JANUARY 2011)

With effect from 1 January 2011, for most transactions, output tax will be accounted for based on the earlier of the following:

1. When an invoice is issued.
2. When payment is received.

CONDITIONS FOR CLAIMING INPUT TAX

You must satisfy these conditions to claim input tax:

1. The entity is GST-registered;
2. The goods or services are supplied/goods are imported, for use by the registered business purposes;
3. Local purchases are supported by valid tax invoice or accounting invoice or a simplified tax invoice (when the billed item is less than SGD1000) addressed to the registered entity;
4. Imports are supported by import permits which shows the registered entity as importer of the goods;
5. The input tax is directly attributable to taxable supplies (i.e., standard-rated supplies and zero-rated supplies), or out-of-scope supplies which would be taxable supplies if made in Singapore;
6. The input tax claims are not disallowed under Regulations 26 and 27 of the GST (General) Regulations.

TAX INVOICE

A tax invoice is the main document for supporting an input tax claim. The tax invoices issued to the customers and those received against goods and services supplied by the suppliers, must be retained for at least five years. Such invoices, however, need not be submitted with the GST returns.

A tax invoice must be issued when your customer is GST registered. Your customer needs to keep this tax invoice as a supporting document to claim input tax on his standard-rated purchases. In general, a tax invoice should be issued within 30 days from the time of supply.

A tax invoice need not be issued for zero-rated

supplies, exempt supplies and deemed supplies or to a non-GST registered customer.

The tax invoice must also provide details on exempt, zero-rated, or other supplies, if applicable. The gross amount payable for each type of supply must also be separately stated.

A typical tax invoice is shown below with the required information indicated:

1. Reference, that is, it is a tax invoice
2. Supplier's name and Address
3. GST registration number
4. Invoice date
5. Invoice identification number
6. Customer's name and address
7. Description of goods
8. GST rate applied
9. Total value of goods before GST
10. GST amount charged
11. Total Value of invoice, including GST

Out of scope supplies *refers to supplies which are outside the scope of the GST Act*. In general, they are:

- Transfer of business as a going concern,
- Private transactions,
- Third country sales – refers to sale of goods from a place outside Singapore to another place outside Singapore,
- Sales made within Zero GST Warehouse.

Expenses Incurred by Employee on Behalf of the Company

Claim for input tax are generally not allowed for purchases if the tax invoices are not addressed to the company name.

However, input tax claims can be allowed if it can be proved that the employee is acting as an agent of the company (i.e., the taxable person) in receiving the supply of goods or services.

For example, reimbursements made to the employee for business expenses.

GST on Imported Services

GST has been introduced on imported services on or after 1 January 2020.

Taxing Business-to-Business ("B2B") imported services by way of reverse charge

If an assess is either:

1. a GST-registered partially exempt business that is not entitled to full input tax credit; or
2. a GST-registered charity or voluntary welfare organization that receives non-business receipts, they will be required to account for GST on all services that are procured from overseas suppliers ("imported services") as if the assesses is the supplier, except for certain services which are specifically excluded from the scope of reverse charge.

The assesses will be entitled to claim the corresponding GST as input tax, subject to the normal input tax recovery rules.

The majority of businesses make taxable supplies and thus would not be affected by this reverse charge mechanism.

Taxing Business-to-Consumer ("B2C") digital services by way of an overseas vendor registration regime

There is a requirement to register for GST in Singapore if the business:

1. have an annual global turnover exceeding $1 million; and
2. make B2C supplies of digital services to customers in Singapore exceeding $100,000.

Once registered for GST, it is mandatory to charge and account for GST on B2C supplies of digital services made to customers in Singapore.

In case of an electronic marketplace operator

Under certain circumstances, whether a business operator is a local or an overseas operator of an electronic marketplace, it may be regarded as the supplier of the digital services provided by the overseas suppliers through their marketplace.

In such cases, business operators are required to include the value of these services to determine their GST registration liability. If they are liable for GST registration or are already GST-registered, they are required to charge and account for GST on B2C supplies of digital services made through their marketplace to customers in Singapore on behalf of the overseas

suppliers, in addition to digital services made by them directly to customers in Singapore.

GST UPDATE – SUPPLY OF DIGITAL PAYMENT TOKENS

With effect from **1 January 2020**, the use/ provision of digital payment tokens as payment for anything (other than fiat currency or other digital payment tokens) is **disregarded as a supply** for GST purposes.

For GST purposes, the following supplies of digital payment tokens are **treated as exempt supplies:**

- Exchange of digital payment tokens for fiat currency or other digital payment tokens
- Provision of loans of digital payment tokens

In order to qualify as a digital payment token, the token must have all of the characteristics below:

- it is expressed as a unit;
- it is designed to be fungible;
- it is not denominated in any currency, and is not pegged by its issuer to any currency;
- it can be transferred, stored or traded electronically;
- it is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, without any substantial restrictions on its use as consideration; but does not include:
  - money;
  - anything which, if supplied, would be an exempt supply of financial services;
  - anything which gives an entitlement to receive or to direct the supply of goods or services from a specific person or persons and ceases to function as a medium of exchange after the entitlement has been used.

Examples of digital payment tokens are Bitcoins, Ether, Litecoin, Dash, Monero, Ripple and Zcash.

Analysis of Amendments in GST

Applicable From 1st January 2022

by Team OmniVAT

CHANGES IN E-COMMERCE SECTOR

RESTAURANT SERVICES

Central Government vide NN 17/2021-Central Tax (Rate) has amended NN 17/2017-Central Tax(Rate) so as to include supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises under the ambit of Section 9(5) of the CGST Act, 2017, where specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation

After this amendment, e-commerce operators shall be liable to pay GST on supply of restaurant services made through them. For restaurant supplies made by restaurants located at specified premises, burden to pay GST will remain with restaurant.

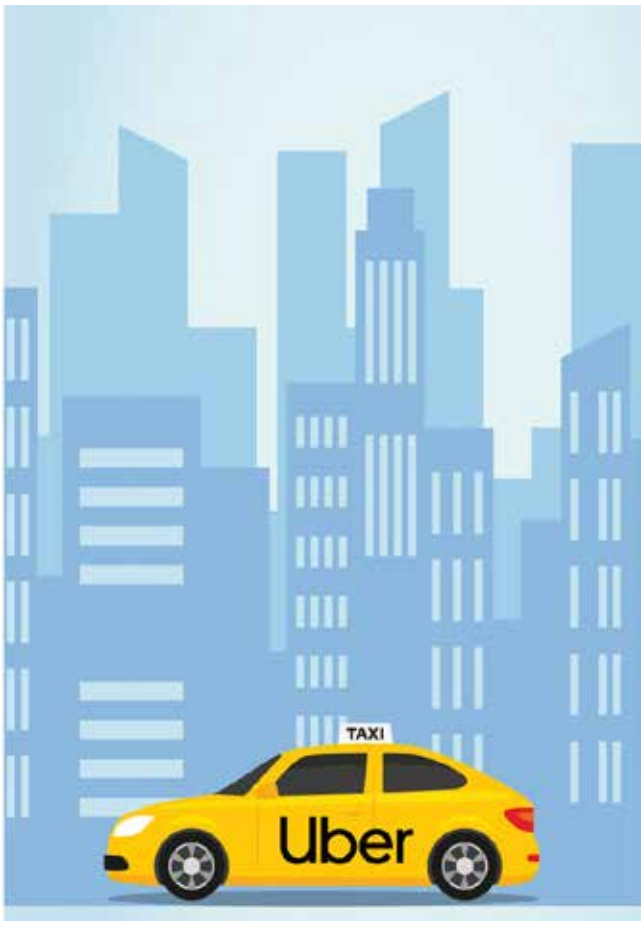
above seven thousand five hundred rupees per unit per day or equivalent.

This means e-commerce operators, such as Swiggy and Zomato, being made liable to collect and deposit GST with the government on restau- rant services supplied through them from 1st January 2022, and they would also be required to issue Tax invoices in respect of such services.

To clarify modalities of compliance to the GST laws in respect of supply of restaurant ser- vice through e-commerce operators (ECO), Government has also issued Circular No. 167 / 23 /2021 – GST dated 17.12.2021.

Transportation Of Passengers

Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle are already covered under the ambit of section 9(5) of the CGST Act, 2017. W.e.f. 1st January, 2022 this entry will also include Services by way of transportation of passengers by an omnibus or any other motor vehicle.



Further, transportation of passenger by

i. Non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; and

ii. Stage carriage other than airconditioned stage carriage

iii. Metered cabs or auto rickshaws (including e-rickshaws is exempt vide entry no. 15 of the NN 12/2017-Central Tax(Rate) however w.e.f. 1st January 2022 this exemption has been withdrawn in cases where these services are provided through e-commerce operators. Meaning thereby for transportation of passenger by non-airconditioned stage carriage through e-commerce operator, e-commerce operator shall be liable to collect and pay GST.

It should be noted that these provisions will not be applicable to local passenger transport services provided by auto-rickshaws/cab through offline/ manual mode, which attract no taxes.

CHANGE IN EFFECTIVE RATE OF TAX

WORKS CONTRACT SERVICES : INCREASE IN RATE OF TAX FROM 12%I5% TO 18%

Presently following works contract services provided to Governmental authority and Governmental entity qualify for concessional rate of tax (12% or 5%) however w.e.f. 1st January 2022 this benefit has been withdrawn:

a. Construction erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, - (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or

antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal

b. Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clini- cal, or(iii) an art or cultural establishment; or c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017

c. Works Contract Services involving predominantly earth work (that is, constituting more than 75per cent. of the value of the works contract)

d. Works Contract Services provided by sub-contractor to main contractor providing ser- vices mentioned in point (a), (b) and (c).

Here it is worthwhile to note that benefit of concessional rate of tax will continue to be avail- able for services provided to Central Government, State Government, Union territory and a local authority.

GST Exemption Withdrawn

Presently following services provided to Governmental authority and Governmental entity are exempt from GST however w.e.f. 1st January 2022 exemption shall not be allowed:

a. Pure services (excluding works contract service or other composite supplies involving supply of any goods) by way of any activity in relation to any function entrusted to a Pan- chayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

b. Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitu- tion.

c. Transportation of passenger by

   i. non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire,

   ii. stage carriage other than airconditioned stage carriage, and

   iii. metered cabs or auto rickshaws (including e-rickshaws) when supplied through an electronic commerce operator

Benefit of exemption will continue to be available when these services are provided through manual/ offline mode.

Textile Sector

NN 14/2021-Central Tax (Rate) has proposed to increase GST rate on MMF, MMF yarn, fabrics and apparel from 5% to 12%. Also, NN 15/2021-Central Tax (Rate) has proposed to increase rate of GST, from 5% to 12%/18%, on services by way of dyeing or printing of the said textile and textile products.

Change in rate of tax was proposed to be applicable w.e.f. 1st January 2022 however GST Council in its 46th Council meeting dated 31.12.2021 has recommended to defer the earlier decision to Increase the rates in textiles sector recommended in the 45th GST Council meeting.

To implement 46th GST Council's decision, Government has issued NN 21/2021-Central Tax (Rate) and NN 22/2021-Central Tax (Rate) both dated 31.12.2021. Consequently, the existing rates in textile sector would continue beyond 1st January, 2022 till further announcement.

Footwear Sector

Rate of GST on footwear, sale value not exceeding INR 1,000/-, shall increase from 5% to 12%.

SCOPE OF SUPPLY

Finance Act, 2021 has proposed to widened the scope of supply. Clause (aa) and corresponding Explanation is proposed to be inserted with retrospective effect from 01 July 2017 in sub-section (1) of Section 7 of the CGST Act, 2017 containing the meaning of term 'supply'. The inserted text shall read as –

"(aa) the activities or transactions, by a person, other than an individual, to its members or constituents

or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation. – For the purposes of this clause, it is hereby clarified that, notwithstanding any- thing contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to be taken place from one such person to another.

A corresponding amendment is proposed to be carried out in Schedule II of CGST Act, 2017 with retrospective effect from 01 July 2017 by way of omission of Paragraph 7 which reads as –

"7. Supply of Goods The following shall be treated as supply of goods, namely:— Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration."

Recently, Central Government vide NN 39/2021-Central Tax has appointed 1st January 2022 as the date on which these provisions shall come into force.

ELIGIBILITY TO CLAIM ITC

The pre-conditions listed in Section 16(2) of CGST Act, 2017 for availing Input Tax Credit (ITC) by any registered person have been proposed to be increased by way of inserting clause (aa) in sub-section (2) which provides for –

"(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;"

Recently, Central Government vide NN 39/2021-Central Tax has appointed 1st January 2022 as the date on which these provisions shall come into force.

Further vide NN 40/2021-Central Tax corresponding amendment has been made in rule 36(4). After this amendment no ITC shall be availed by a registered person unless invoice/debit note –

a. furnished by the supplier in the statement of outward supplies in **FORM GSTR-1**

b. Said details have been communicated to the registered person in **FORM GSTR-2B**

REFUND

The Central Board of Indirect Taxes and Customs (CBIC) has notified that rules related to Mandatory Aadhaar authentication for GST Refund are to be effective from 1 January 2022.

Further, relaxation has been provided to UIN holders where Unique Identity Number of the applicant is not mentioned in a tax invoice. The refund of tax paid by UIN on such invoice shall be available if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application.

RECOVERY PROCEEDINGS

In section 83 of the Central Goods and Services Tax Act, for sub-section (1), the following sub-section shall be substituted, namely:–

"(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisional- ly, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed."

The powers of provisional attachment of property under Section 83 has been increased to include any proceedings under Chapter XII (Assessment), Chapter XIV (Inspection, Search, Seizure & Arrest) or Chapter XV(Demands & Recovery).

Corresponding amendments has been made in CGST Rules-

a. Rule159(2) has been amended to provide that a copy of order of attachment in FORM DRC-22 shall also be sent to the person whose property is being attached under sec- tion 83.

b. Other changes in Rule 159 have been made to incorporate the changes made in Sec 83 providing for attachment of property of a person other than the taxable person i.e any person specified in sub-section (1A) of section 122.

c. Any objection to the order of provisional attachment of property is to be filed in FORM DRC-22A whose format has also been notified now.

DETENTION AND SEIZURE

Amendment of Section 129 on Detention, Seizure And Release of Goods and Conveyances in Transit

Section 129 contains penalty for release of goods and conveyance which are detained or seized. Finance Act, 2021 proposed to amend tax and penalty payable under sub-section (1) of Section 129 in order to –

a. Remove payment of tax so as to get the goods and conveyance released; and,

b. Increase the amount of penalty leviable.

Recently, Central Government vide NN 39/2021-Central Tax has appointed 1st January 2022 as the date on which these provisions shall come into force.

With effect from 1st January 2022 revised payment of penalty under sub-section (1) is as follows:

(i) In case owner of the goods comes forward for payment of such penalty

  a. In case of taxable goods – Applicable tax and penalty equal to 200% of tax payable; and,

  b. In case of exempt goods – Amount equal to 2% of the value of goods or Rs. 25,000, whichever is less

(ii) In case owner of the goods does not come forward for payment of such penalty

  a. In case of taxable goods – Applicable tax and penalty equal to the 50% of the value of the goods reduced by the tax amount paid thereon or 200% of tax payable, whichever is higher; and,

  b. In case of exempt goods – Amount equal to 5% of the value of goods or Rs. 25,000, whichever is less.whichever is less

In addition, following amendments will also became applicable w.e.f. 1st January 2022

  a. Proper officer will have to issue the order specifying the penalty amount within 7 days of issue of notice.

  b. No penalty can be levied without granting the opportunity of personal hearing.

  c. The person on whom penalty is levied have to pay the amount within 15 days of the receipt of order otherwise sized goods will be disposed off for recovery of penalty amount.

However, seized conveyance can be released on payment of penalty of Rs. 1 Lac or the penalty which is specified above, whichever is lesser.

New Rule 144A "Recovery of Penalty by Sale of Goods or Conveyance Detained or Seized In Transit" Has Been Inserted with Effect from the 1 Jan, 2022-

- Where the penalty u/s 129 is not paid within 15 days from the date of receipt of order of detention, Proper officer shall proceed for sale or disposal of goods or conveyance so detained.
- The said goods or conveyance shall be sold through a process of auction, including e-auc- tion, for which a notice shall be issued in FORM GST DRC-10.
- Auction process shall be cancelled where the person transporting said goods or the owner of such goods pays the amount of penalty, including any expenses incurred in safe custo- dy and handling of such goods or conveyance, after the time period of 15 days but before the issuance of notice for auction.
- Atleast 15 days' notice to be given for auction.
- Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.
- On payment of the full bid amount, the proper officer shall transfer the possession and ownership of the said goods or conveyance to the successful bidder and issue a certificate in FORM GST DRC-12.
- The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate par- ticipation or due to low bids.
- Where an appeal has been filed by the person under the provisions of sub-section (1) read with sub-section (6) of section 107, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit under this rule shall be deemed to be stayed.
- Provided that this sub-rule shall not be applicable in respect of goods of perishable or haz- ardous nature.

Rule 154 has been Substituted to Provide for -"Disposal of Proceeds of Sale of Goods or Conveyance and Movable or Immovable Property".

The amounts so realized shall be appropriated against-

a. Administrative cost of the recovery process.

b. Amount to be recovered or to the payment of the penalty payable under section 129(3).

c. Any other amount due from the defaulter under IGST,UTGST,SGST and rules thereunder.

d. The balance, if any, shall be credited to-

- Registered person- electronic cash ledger Unregistered person - Bank account of the person concerned
- Where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund.

CHANGES HAVE BEEN MADE IN VARIOUS FORM

Changes have been made in FORM DRC-10, DRC-11, DRC-12, DRC-22, DRC-23 and APL-01.

S.NO.	Form number	Name
1.	GST DRC-10	Notice for Auction of Goods under section 79 (1) (b) of the Act
2.	GST DRC-11	Notice to successful bidder
3.	GST DRC-12	Sale Certificate
4.	GST DRC-22	Provisional attachment of property under section83
5.	GST DRC-23	Restoration of provisionally attached property / bank account under section83
6.	GST APL-01	Appeal to Appellate Authority

MISCELLANEOUS

Changes have been made in FORM DRC-10, DRC-11, DRC-12, DRC-22, DRC-23 and APL-01.

Blocking of GSTR-1 for Non-Filing of GSTR 3B

From 1st January 2022, the GSTR-1 return filing facility will be blocked if you have not sub- mitted the return in FORM GSTR-3B for the previous two return periods. For example, if a taxpayer has not filed GSTR-3B for October 2021 and November 2021, the GSTR-1 filing facili- ty will be blocked from the 1st January2022.

Amendment of Section 107 on Appeals to Appellate Authority

In section 107 of the Central Goods and Services Tax Act, in sub-section (6), the following proviso shall be inserted, namely:–

Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant. Hence, an appeal against an order Sec 129(3) shall be filed only when a sum equal to twen- ty-five per cent of the penalty has been paid by the appellant.

Explanation in Sub-Section (12) to Section 75 on General Provisions Relating to Determination of Tax

Explanation.– For the purposes of this sub-section, the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

GSTR-1 is notified under Section 37 and GSTR-3B is notified under Section 39.

Canteen Facilities to Employees

GST Implications

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One of the disputed areas under GST is "Taxability of the benefits extended by the employer to their employee". Canteen facilities are often arranged by the corporates for their employees which is generally run by a third party to comply with the legal obligation as mandated by the Factories Act, 1948. These expenses are borne by the employer for the benefit and upliftment of the employees. An attempt has been made to understand the nature of this transaction under different scenarios by analysing it under the legal provisions provided under the GST law.

The canteen facility is often provided by a third party and a nominal amount is recovered by the employer from the employees.

Taxability as to whether the transaction of recovering nominal amount from the employees by the employer will qualify to be "Supply" under the GST regime

Levy of GST arises if a transaction qualifies to be a supply and under the GST law the ambit of the word "supply" is wide enough to cover a wide range of activities and it is an inclusive definition.

Section 7(1) (c) of the CGST Act, 2017, states that the expression "supply" includes-

…(c) The activities specified in Schedule I, made or agreed to be made without a consideration…

Activities to be considered as supply even if made without consideration are provided in the Schedule I of the CGST Act, 2017. Thus, even if no consideration is received by the supplier these specified activities will be considered as supply.

It is important to take a note of **Entry no. 2 of schedule** I of the CGST Act, 2017 which is as follows:

*Supply of goods or services or both between **related persons** or between distinct persons as specified in section 25, when made in the course or furtherance of business.*

Explanation to Section 15 of the CGST Act, 2017 states that person shall be deemed to be a related person if they are employer and employee. Thus employer and employee of an organization are **related to each other.**

Canteen facilities provided by the employer to the employees will fall under the definition of supply in both the cases whether it is for a consideration or without the consideration. In other words irrespective of whether the company recovers any amount from the employees or the company provides the canteen facility free of cost, in both the cases the transaction will be covered under the definition of supply.

CBIC issued a press release dated 10-07-2017 to provide clarity on taxation of perquisites provided by the employer to the employees. In the press release it was stated that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee (part of salary/ CTC), will not be subjected to GST.

There might arise a confusion in the minds of the readers after going through Schedule III to the CGST Act, 2017 which provides a list of activities or transactions which shall be treated neither as a Supply of Goods nor a Supply of Services.

Section 7(2)(a) read with Entry No. 1 of Schedule III of the CGST Act, 2017 specifically provides that 'Services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services'.

The above discussion is summarized below:

Services by Employee to employer	Schedule III i.e., No supply No GST
Services by Employer to employee (Part of salary/CTC)	Schedule I i.e., Supply, but no GST as per Press Release
Services by Employer to employee (not part of salary/CTC)	Schedule I i.e., Supply, & GST will be charged

Thus, the services which are provided by the employer to the employee will be considered as supply and GST will be levied on these services but the next question which arises is on what Value will the tax be discharged.

Value on which GST will be discharged

As per Section 15(1) of the CGST Act, 2017, the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or is payable for the said supply, where the supplier and recipient are not related and the price charged is the sole consideration.

Since the transaction of providing canteen facility is between related parties i.e., the employer and employee, the transaction value cannot be taken as the value and reference will be made to the set of rules provided by the CGST Rules, 2017.

As per Rule 28, of the CGST Rules, 2017

The value of the supply of goods or services or both between distinct persons as specified in sub-sections (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

a) be the open market value of such supply;

b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Thus, the open market value, if available, will be the value of supply.

Admissibility of Input Tax Credit for GST paid on canteen services

As a general rule GST paid on purchase of goods or services used in the course or furtherance of business

is allowed as Input Tax Credit (ITC) to offset the liability to pay GST on the outward supply unless the same is specifically blocked under Section 17(5) of the CGST Act, 2017.

A registered person is ineligible to claim Input Tax Credit even if all the conditions mentioned in Section 16 of the CGST Act, 2017 are satisfied due to the specific provisions of Section 17(5).

As per Section 17(5)(b) of the CGST Act, 2017, ITC shall not be available in respect of following, namely:-

(b) the following supply of goods or services or both-

i. food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

ii. membership of a club, health and fitness Centre; and

iii. travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Thus, ITC in respect of the above mentioned goods and services shall not be allowed to be claimed by the registered person, since the same are specifically blocked under Section 17(5).

Whether ITC will be allowed in respect of goods or services, which are obligatory for an employer under any law for the time being in force?

In the Advance Ruling ***Musashi Auto Parts (P.) Ltd., In re***[1] a similar question is answered.

The applicant company is a manufacturing unit of auto parts having around 2400 full-time working employees as well as contract based employees. As per Section 46 of the Factories Act, 1948, it is mandatory for every employer to provide canteen/food facilities for employees, if the number of employees are more than 250. So, the company under the mandate by law is required to provide Canteen/food facilities to employees working therein.

The applicant company recovers a nominal amount from the employees as a reimbursement of expenses. Applicant receives Inward Supply of Canteen Services for employees working in the manufacturing unit and against the same distributes coupons to employees on subsidized price to avail canteen services.

As per the above AAR the applicant is not eligible to claim input tax credit as a careful reading of Section 17(5) would suggest that proviso to Section 17(5)(b)(i) is with regard to the provision contained in Section 17(5)(b)(iii) and not Section 17(5)(b)(i).

A similar view has been taken in the case of ***Tata Motors Ltd., In re***[2]***.***

[1][2021] 124 taxmann.com 87 (AAR - HARYANA).

The applicant, with the aim to comply with the mandatory requirement of maintaining the canteen as per the Factories Act, 1948, has arranged a canteen at its factory premises for its employees, which is run by a third party Canteen Service Provider. As per the arrangement, part of the canteen charges is borne by the applicant; whereas the remaining part is borne by its employees. The said employees' portion of the canteen charges is collected by the applicant and paid to the Canteen Service Provider. The applicant does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges.

Sub-clause (i) of Section 17(5)(b) ends with a colon (:) and is followed by a proviso and this proviso ends with a semicolon (;).

Colons and semicolons are two types of punctuation. Colons are used in sentences to show that something is following, like a quotation, example, or list. Semicolons are used to join two independent clauses/sub-clauses, or two complete thoughts that could stand alone as complete sentences. That means they are to be used when you are dealing with two complete thoughts that could stand alone as a sentence.

Semicolon creates a wall to convey mutual exclusivity between the sub-clauses, in the present matter. It is obvious that the Legislature intended the said sub-clauses to be distinct and separate alternatives with distinctively different qualifying factors and conditionality.

Thus, sub-clause (i) of Section 17(5)(b) ending with a colon and followed by a proviso which ends with a semicolon is to be read as independent of sub-clause (iii) of Section 17(5)(b) and its proviso.

Thereby the proviso to sub-clause (iii) of Section 17(5)(b) is not connected to the sub-clause (i) of Section 17(5)(b) and cannot be read into it.

It was held that the input tax credit of GST paid on canteen facility is blocked credit under Section 17(5)(b)(i) and inadmissible to the applicant.

In both the above Advance Rulings a similar view of not allowing the ITC of GST paid on canteen facility is taken by the Authorities for Advance Ruling but the very intent of providing free flow of Input Tax Credit by the government for the GST paid on goods or services in the course or furtherance of business is in question by bringing this under Section 17(5) as blocked credit irrespective of the addition of the proviso stating ITC will be allowed in respect of goods or services, which are obligatory for an employer under any law for the time being in force.There are some points which are required to be noticed:

- The proviso inserted after clause (iii) of Section 17(5)(b) at first reading provides that the same is to be read after all the three clauses. If this proviso was only for clause (iii), then it should be placed exactly in the same way as the first proviso to Section 17(5)(b)(i) is placed in the Act.
- Also, the expression used by the law maker is "**such goods or services or both shall be available, where it is obligatory**". This somewhere implies that the proviso added is in regard to both goods and services and not only the leave travel benefits which is purely service as provided in clause (iii).

There could be different arrangements and situations under which the employer provides the canteen facility to their employees which are listed below for better understanding.

Case 1: When the caterer raises invoice directly to the employee for Rs 100/- with GST and the employee gets the reimbursement of the same from the employer as per the employment terms.

This will fall under Schedule III i.e., will not be considered as supply and no GST will be charged.

In this case, the company will book the whole amount as expense in its books of account. There is no question of claiming the ITC as the invoice issued is not in the name of company.

Case 2: When the caterer is providing food @ Rs 100/- but the invoice is raised in two parts. 30% to the employee i.e., Rs 30/- with GST and 70% to the employer i.e., Rs 70/- with GST. The company pays Rs 70/- with GST to the caterer.

In this case, the services are provided by the caterer directly to the employees without the involvement of the employer. Also, the company is paying directly Rs 70/- plus taxes to the caterer.

Employer will not be required to pay GST since the same is as per the employment contract in the nature of perquisites.

As per the AAR in ***Musashi Auto Parts (P.) Ltd***. and ***Tata Motors Ltd***, as discussed above, ITC will not be allowed. Even if the same is allowed it will be restricted to only 70% which is paid by the company considering the canteen facility provided by the employer to employee is under an obligation of Factories Act, 1948.

Case 3: When the caterer is providing food @ Rs 100/- + GST and the invoice is issued in two parts, Rs 70/- plus GST to the company and Rs 30/- plus GST to the employee. Subsidized rate of Rs 30/- is deducted from the salary of the employee and payment of Rs 100/- plus taxes is done to the caterer by the company.

In this case, the employer will not be required to pay GST since the same is as per the employment contract in the nature of perquisites.

As per the AAR in ***Musashi Auto Parts (P.) Ltd***. and ***Tata Motors Ltd***, as discussed above, ITC will not be allowed and if allowed will be restricted only to the taxes paid on Rs 70/- by the company considering it obligatory under the Factories Act, 1948.

Case 4: When the caterer is providing food @ Rs 100/- + GST and the invoice of Rs 100/- plus tax is issued to the company. Subsidized rate of Rs 30/- is recovered by the company from the employees & payment of Rs 100/- plus taxes is done by the company to the caterer directly.

In this case the company will be required to pay tax on Rs 30/- which is recovered from the employees. Since there is an employer-employee relationship, Rs 30/- cannot be considered as the "Transaction value" and accordingly valuation rules will apply in order to arrive at the value.

As per Rule 28, Open Market value will be considered as the value on which GST will be levied, in this case this will be Rs 100/-. Thus, the company will pay GST on Rs 100/- @ 5% as per Notification No 20/2019-Central Tax (Rate) dated 30th September, 2019.

Entry no (ii) of the notification states that supply of "restaurant services" other than at "specified premises" will be liable to pay tax @ 5% provided that credit of input tax charged on goods and services used in supplying the services has not been taken.

In the same notification, "Restaurant service" is defined as:

"Restaurant service" means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

In this case as per the above notification Input Tax Credit will not be allowed on the canteen services provided by the employer to the employee, where the employer is discharging tax @5% on outward supplies despite the same is under a legal obligation.

In order to conclude the above analysis, it can be said that all the services which are provided either by the employer to employee or vice-versa, under the employment contract as perquisites are outside the ambit of GST. If the services are provided by the employer to the employees and the same does not become part of the employment agreement, liability to pay GST arises since the same is not excluded and will be considered as supply. It is a heavy cost for the companies since the government does not seem to be in the favour of providing ITC on the canteen services as can be seen from the decisions in the AAR.

[2][2021] 129 taxmann.com 277 (AAR - GUJARAT).

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Implications of VAT in Automotive Sector in UAE

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In a recent research by the Emirates NBD, UAE holds the second-largest position in the automotive market in the Gulf Cooperation Council (GCC). UAE Minister of Economy, Abdulla Bin Touq Al Marri, also stated that one of the most vital sectors for the future economy is the automobile industry.

The primary industrialization strategy of the UAE lies in the promotion of oil and gas industries. However, as a motive to expand their industrialization for a better, stable, and balanced economy, the automotive industry is the ideal long-term option. Further, it also prevents expensive imports and generates employment opportunities.

First and foremost, the sale of cars within UAE is subject to VAT at 5%. The sale transactions can be carried out by a variety of agreements. Let us understand the relevant VAT issues under different agreements of automotive sector in this article.

Outright Sale

Outright Sale is sale within UAE, wherein, the customer has resources available either in the form of cash or borrowed funds from financial institution for procurement of the vehicle. The VAT implications of outright sales are as follows:

(a) The date of supply is earlier of one of the following events:

- the date on which the car is transferred to the customer;
- the date on which the customer took possession of the car;
- the date of receipt of payment; or
- the date of issuance of tax invoice.

Illustration-

Date of issuance of tax invoice	22-12-2021
Date of receipt of payment	29-12-2021
Date on which customer took possession	25-12-2021
Date on which car is transferred to the customer	28-12-2021

Date of supply in the above case is 22-12-2021.

(b) Where the contract for the sale of cars involves periodic payments or consecutive invoices, the date of supply is the earliest of any of the following dates provided that it does not exceed one year from the sale of the car:

- the date of issuance of a tax invoice;
- the date when the payment is due as shown on the tax invoice;
- the date of receipt of payment.

It should be noted that where the date of supply is triggered because a payment is made or a tax invoice is issued in respect of a supply of a car, VAT will only be due to the extent of the payment made or stated in the tax invoice, and the remaining of the due tax on that supply will be payable as and when further dates of supply are triggered.

(c) A tax invoice must be issued within 14 days of the date of supply. The tax invoice must also be delivered to the customer. Also, it is pertinent to note that if any amount is charged as a disbursement for and on behalf of a Designated Government Entity (e.g., Transport Authority/ Department) for provision of a Sovereign Activity, this amount should be clearly identified on the tax invoice and VAT should not be charged on this amount.

(d) The output tax must be reported in the VAT return of the tax period in which the date of supply is triggered.

Hire-purchase agreements

Hire-Purchase Agreement is a tripartite agreement involving two supplies for a VAT implication perspective. When a car is sold by a motor vehicle trader to a customer under such an arrangement, the first supply is by the seller, herein the Motor Vehicle Trader to the Finance Company, and another supply is by the Finance Company to the Customer.

Under the above said agreement, the ownership is at first transferred from the seller to the Finance Company, upon which tax invoice is being issued taking in consideration VAT on the sale price of the car. Later upon the payment of the final instalment by the customer, the ownership is transferred from the Finance Company to the Customer.

The invoice(s) raised by the Finance Company towards the customer consist of two parts i.e.,

- the hire instalments which are liable to VAT and
- the interest amount, exempt from VAT.

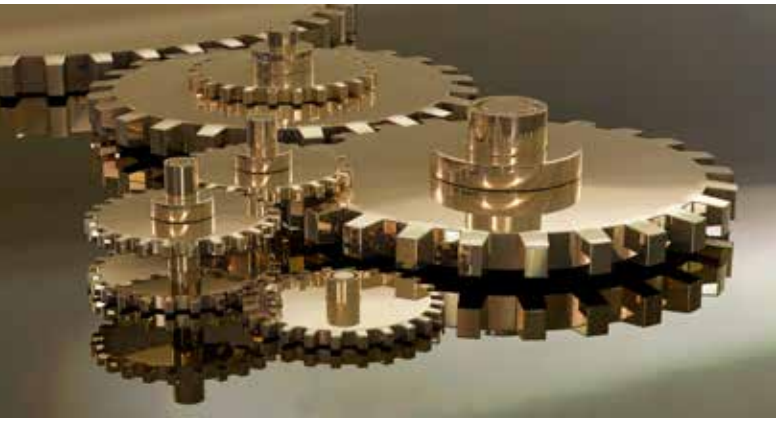
However, if the finance charge is included in the total amount payable by the customer in instalment, then the total amount will be liable to VAT.

Mostly consecutive invoice(s) are issued by finance companies and in such a scenario the date of supply will be ascertained as discussed under the previous heading 'Outright Sale'.

In case of repossession of cars sold

As we know that in a standard Hire-Purchase Arrangement, the ownership is being transferred to the customer at the completion of the hire term upon the payment of the full Hire instalments. But if in case the Finance Company repossesses the car supplied due to any reason before the final instalments are made then the right provided to the Hirer to use the car terminates. Such a repossession is not to be considered as supply for VAT implications. However, when the car is resold by the company to another buyer the usual VAT implications will apply.

In case the company has issued tax invoice(s) to the customer but is unable to collect the debt before repossession, it can adjust the tax liability as per the Bad Debt Scheme if the prescribed conditions are met.



Trade-ins

A trade-in is an arrangement wherein a customer buys a new car by giving their old car as well as some money. Two distinct supplies take place for the purpose of VAT-

I. The sale of the new car to the customer; and
II. The customer's sale of the old car to the motor vehicle trader

For computing the amount of VAT to be charged on sale of new car, the trader should not net off the trade-in value for the old car against the sale price of the new car.

Illustration

Let us say the sale price of the new car is AED 1,00,000 and the trade-in value of the old car brought in by the customer is AED 40,000. Now, VAT shall be charged from the customer on AED 1,00,000 i.e., AED 5000 (without netting off the trade-in value)

The discussions above also applies to 'trade-in over allowances' which means that where the vehicle trader agrees to purchase at a price higher than the market value of the old car.

Illustration

In the above illustration, let us assume that the trader buys the old car at AED 60,000 (i.e., AED 20,000 higher than the market value of the old car). In such a case also, the VAT shall be charged on AED 1,00,000.

Sale of cars to foreign governments, international organisations, diplomatic bodies and missions

VAT is applicable at 5% on sale of cars to foreign governments, international organisations, diplomatic bodies and missions, or an official thereof. However, the foreign governments, international organisations, diplomatic bodies, missions or an official thereof may, seek a refund of such VAT incurred under the special VAT refund scheme prescribed in the VAT legislation.

Sale of used/pre-owned cars

The provisions related to sale of used cars in UAE is also subject to VAT at 5%, provided the sale is made by a VAT registered supplier. A key differentiator between the sale of new and old cars from the perspective of VAT implication is the option given to motor vehicle dealers trading in used car to account for Profit Margin Scheme. However, all the provisions regarding date of supply, invoicing, payment of tax and price displays apply similarly to used cars as well.

In accordance with the Profit Margin Scheme, VAT can be accounted for on the difference between what was paid for a good at the time of purchasing it and what was charged to the customer at the time of selling it rather than accounting for VAT on the transaction value of such supplies.

The rationale for implementing Profit Margin Scheme is to avoid cascading of taxes. Where a used car is purchased from a non-registered person or from a VAT registered person who accounted for VAT by reference to the Profit Margin Scheme, the motor vehicle dealer is not able to recover the VAT as it is embedded in the purchase price and hence the situation of cascading of tax arises. Hence, this scheme is intended to eradicate this effect by allowing motor vehicle trader to account for VAT only on the profit earned on supply.

There are certain conditions which are required to be fulfilled for becoming eligible for applying Profit Margin Scheme:

a. The car must have been purchased by the motor

vehicle trader from a non-taxable person or from a taxable person who calculated tax on the supply by reference to the Profit Margin Scheme.

b. However, as an alternative to condition (a), where the car is purchased from a VAT registered supplier, input tax credit must not have been recovered by reference to Article 53 of the Regulation.

c. The car must have been subject to VAT before the supply in question. The FTA expects the motor vehicle trader to maintain documentation to evidence that the car was previously subject to VAT.

d. The dealer must issue a tax invoice that clearly states that tax has been charged with reference to Profit Margin Scheme in addition to all other required information to be stated on a tax invoice with the exception of VAT amount.

e. The dealer must keep the prescribed records and documents which includes:
   - A stock book or a similar record showing details of each car purchased and sold under the Scheme.
   - Purchase invoices showing details of the car is purchased under the Scheme. But where a car is purchased from a non-taxable person, the dealer must issue an invoice stating details of the car.

f. The motor vehicle trader must inform the FTA that it has opted to account for VAT by reference to the Scheme via its tax return.

In reference to the above conditions which are required to be fulfilled to become eligible for the Scheme, there are however, two instances where the Scheme does not apply.

The first instance is where any stock on hand of used goods which were acquired prior to the implementation of VAT, or which have not previously been subject to VAT for other reasons. Such stock will not be eligible to be sold under the Profit Margin Scheme.

The second instance is where the purchase is made through import. This is because at the time of import, the importer will be able to recover the input tax. Accordingly, the sale of imported used cars in UAE is not eligible for the Scheme. However, if the import VAT was not recovered by the importer by reference to Article 53 of the Executive Regulation, the Scheme will continue to remain applicable.

The report titled "**UAE Used Car and Auto Classified Market Outlook to 2025"** by **Ken Research** recommended that:

"the used car market in UAE is expected to grow further in the near future, with the increased awareness on health and hygiene followed by the onset of COVID-19, thus showcasing a change in consumer preference from availing public transport to private transportation medium. The market is expected to register a positive CAGR of 16.6% in terms of revenue during the forecast period of CY'20-CY'25."

Lease of Car

Leasing of car is an alternative way of supply of car as compared to the traditional way of outright sale. The car may be leased for long term or short term depending on the need of the customers. In case of lease of car, the supply is also subject to VAT at 5%.

The VAT implications relating to date of date of supply, invoicing, payment of tax, are similar to that in 'Outright Sale' as discussed above.

Value of Supply for leased cars

The general rule to determine the value of supply applies to leasing of cars. The value of supply is the entire amount received or expected to be received for the lease of cars less the tax amount.

In the activity of leasing, there are various additional recoveries in form of fees or charges by the supplier, therefore, the different components should be considered and accounted for VAT accordingly.

Illustration

A tourist leased a car from ABC LLC, a motor vehicle trader for four months. Salik (commonly known as toll tax) was being deducted from the vehicle's account as the customer used it on the toll roads. As per the contract, cost of salik was to be recharged by the trader. Therefore, salik is subject to VAT and should be included in the value of the supply.

Warranty Claims

A warranty service is a guarantee given by a manufacturer to his customer, undertaking to remedy any defects of the car due to faulty workmanship or materials for a specified period.

A customer has 2 options to avail warranty service:

i. at the time of sale of the car (price for the warranty service is included in the price of the car); or

ii. separately from the sale of the car (price for the warranty service is charged separately).

In the former case, the cost of the warranty is included in the price of the car, the supplier undertakes to repair any defects in the car for a specified period free of charge. At the time of the original supply i.e., the sale of the car (including on the price for the warranty), the VAT would have already been accounted for and therefore no further VAT implications will arise at the time of providing the actual repair services. It is pertinent to note that the input tax incurred on carrying out the warranty repair services will be recoverable since it was incurred in the making of taxable supplies.

Whereas in the latter case, the warranty service is supplied for an extra charge, customer has an option to purchase an extended warranty for a specified period. The extended warranty is provided for a separate charge and the supplier undertakes to rectify any defect in the car during the additional period and does not charge any further amount to carry out actual repair services. The supply of an extended warranty is a taxable supply of services which is subject to VAT at 5%.

Illustration

What would be the tax liability on the replacement of parts under warranty (where no consideration is charged from a customer)?

No VAT is chargeable on such replacement under warranty, as parts are provided to the customer without consideration. The costs to be incurred during the warranty period are included in the value of the supply made earlier.

Reimbursement of repair costs by distributors from manufacturers

Where a distributor provides warranty services to a customer in the UAE, no VAT implications arise. This is because a distributor's warranty for no extra charge is treated as a composite supply together with the vehicle sold on which VAT has already been accounted for at the time of the original sale. It should be noted that warranties are typically provided by the car manufacturers. Where a distributor is involved in the supply chain, the manufacturer's warranty is essentially passed on to the end customer.

Further, it is equally important to emphasize that reimbursement of repair cost by UAE distributor from overseas manufactures is subject to VAT at 5%. This is because the pre-requisite for treating the supply as a zero-rated export of service (i.e., the service must not be supplied directly in connection with goods situated in the UAE) is not met.

AUCTIONS

Another agreement for sale of cars is sale at auctions. Auctions are places where goods are sold to the highest bidder. In such agreements, the auctioneer could be the owner / principal seller of the cars, however majorly auctions conducted by the auctioneer acting as an agent on behalf of other persons selling their cars.

Let us understand the VAT treatment of auctions depending on whether the auctioneer is acting as a principal supplier or as an agent on behalf of the principal supplier.

Category of Sale	Brief Explanation	Tax Treatment
Auctioneer acting as the principal supplier ('arrangement is undisclosed agency')	Auctioneer owns the car and sells it in the auction. Auctioneer makes the supply of goods.	Where auctioneer is registered under VAT - @ 5% on the supply (unless the conditions of zero rating are met on exporting the cars) If unregistered - it must evaluate whether VAT registration obligations have arisen on account of the supply
Auctioneer acting as an agent of the principal supplier ('arrangement is disclosed agency')	Auctioneer does not own the car but simply provides the marketplace and assistance in the process of selling the cars belonging to others through the auction.	The supply may either be standard-rated (if the principal supplier is registered for VAT), zero-rated (if the principal supplier is registered for VAT and the car is exported from the UAE) or outside the scope of VAT (if the principal supplier is not registered and not required to register for VAT) depending on the facts of the sale. The principal supplier shall comply with the tax.

Issuance of tax invoices by auctioneer on behalf of the principal supplier

A VAT-registered agent which makes a supply on behalf of a VAT-registered principal supplier may issue their own tax invoice in respect of the supply with the particulars of the agent, as if that agent had made the supply of goods or services itself. However, a reference with regards to the principal supplier viz. its name and TRN should be made in the invoice. In case the auctioneer does not issue a tax invoice on behalf of the principal supplier, there is no such requirement for issuance of invoice by the principal supplier.

Further, the principal supplier remains responsible for accounting of the VAT on the supply and comply with all the tax obligations in respect of the supply.

Commission Charged by Auctioneers

Commission and/or premium is consideration for a taxable supply by the auctioneer for the auctioning services and therefore liable to VAT @5%.

Few miscellaneous arrangements

Free Promotional Gifts

Various promotional gifts are offered by the trader on sale of cars free of any charge. In case the trader recovers the input tax on purchase of gifts and in turn supplies them free of any consideration the supply will be subject to deemed supply provisions. However, where the trader does not recover any input tax on the purchase, the deemed supply provisions will not apply.

Discounts

Additionally, the trader also provides discounts on the sale price of the cars. In such case VAT is applicable on the discounted value charged from the customer. The motor vehicle must separately mention the discount offered in order to account for VAT only on the discounted value.

Discounts are also offered to the motor vehicle dealer in the form of volume discounts/bulk discounts/ performance discounts. Such discounts encourage the distributor to increase sales and achieve targets. Where such discounts are provided by the manufacturer, the manufacturer should clearly depict the discount in the invoice. For discounts based on achieving sales target, the manufacturer should issue a credit note to reduce the value. On the other hand, the motor vehicle dealer may raise a tax invoice and charge VAT at the appropriate rate if the discount is received on the basis of a specific activity.

Illustration

A manufacturer sells a car to MNO LLC for AED 5,00,000 offering a 5% discount for purchase of 10 or more cars. To encourage prompt payment, manufacturer offers additional 1% discount if MNO pays within 7 days.

Value of cars	- AED 50,00,000
Discount (at the time of sale)	- AED 2,50,000
Value on which VAT to be paid	- AED 47,50,000

Further discount of additional 1% is not accounted at the time of sale but will be considered if payment is received within 7 days and therefore the manufacture can issue a credit note for the same.

Demo cars

For test drive experience and showcase, the motor vehicle trader often displays demo cars. While other cars are sold at the original sale price, demo cars cannot be sold at the same value and therefore, manufacturer agrees to a reduction in the original sales price. Considering this as

discount, the manufacturer may issue a credit note for such reduction.

Other important points

Company cars

The input tax credit is blocked if the company cars are available for the personal use of its employees. Also, incidental expenses such as insurance, maintenance, servicing, related to such car cannot be recovered.

Price Display

Motor vehicle traders display their cars in their exclusive showroom for a customized boutique experience for the customer. It is equally important to deliver right information to the customer in terms of prices and varied other taxes and for that reason the traders should display, advertise publish or quote the VAT inclusive prices. Let us say, if a car is priced at AED 2,00,000 and the applicable VAT is AED 10,000, the trader must advertise the same at the price inclusive of VAT i.e., AED 2,10,000.

However, in the following two instances the trader is no required to advertise the price inclusive of VAT, rather it is advised to clearly specify the VAT exclusive prices-

- Where the supply is meant for export.
- Where the customer is registered under VAT.

E-INVOICE SYSTEM in GST (VAT)

Global Perspective and the Way Forward

by Team OmniVAT

Goods and Services Tax (GST), also popularly known as VAT in global jurisdictions, is one the recent Indirect taxation reform in various jurisdictions. Every Government wishes to introduce reforms and welfare measure for the society, looks for resources for the same, and Indirect Tax, which is fairly easy to collect as compared to direct taxes, is the first choice to meet the requirement for resources. At the same time, economists develop the theory around "Efforts vs Collection", wherein with much less efforts the collection of Indirect Taxes is always significant.

With aim to ensure better compliance, ease of doing business and reduced cost and time in communication, globally, the regulators are gradually adopting E-invoicing, which not only facilitates the tracking of transactions for them, but also offers ease of doing business and time/cost savings for entrepreneurs. In this era of digitization, automated and digitized invoicing processes have become essential. The switch to electronic invoicing makes it possible to save up to 80% of costs compared to paper invoices. In addition, resources such as personnel, time, and raw materials can be saved and errors minimized.

In this article, we have tried to compile and assimilate provisions relating to E-Invoicing in different jurisdiction, various features and applicability which may guide the different jurisdictions to assess the best practices and with customisation can be adopted for obvious benefits.

International Standard for Procurement Framework – Foundation for E-Invoice

PEPPOL (Pan-European Public Procurement On-Line): It is an international eProcurement framework which enables cross-border digital exchange of procurement documents and data. It complements Electronic Data Interchange (EDI) and other electronic means for exchanging business documents. Peppol transmits data through a secure network of approved service providers, called access points. Access points connect you to the Peppol network and allow you to exchange invoices and other documents with your trading partners registered on the network.

The Peppol framework consists of:

- a set of artefacts and specifications that can be used in existing eProcurement and eBusiness solutions
- the e-Delivery network (Peppol network) that facilitates the exchange of data between different systems
- a multi-tiered structure of legal agreements and decision making that ensure proper governance.

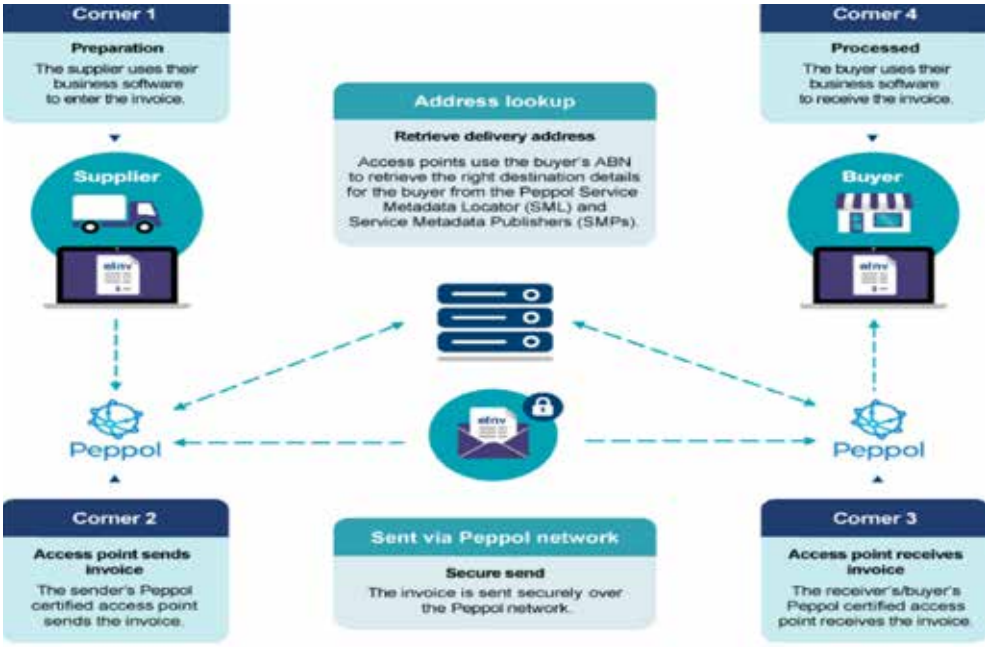
Open Peppol gives the authority to manage the framework in various countries across the world to its members. Peppol began in 2008 and is now used in almost 40 countries.

The Peppol network is being used for e-invoicing wherein business and trading partners need to connect to the Peppol network through an access point. The Peppol Directory External Link contains the list of users registered on the Peppol network and their receiving capabilities. This means you can look up if your trading partners are connected to Peppol and see what business documents they can receive via Peppol (e.g., e-invoices).

Peppol and electronic data interchange

Businesses have exchanged documents such as invoices electronically for decades via different channels, including:

- electronic data interchange (EDI)
- data entry portals
- data file transfers



Peepol System [1]

India

In India, after much deliberation, the first introduction of electronic invoicing (E-Invoice) for B2G transactions have been in place since October 1, 2020. With that all the assessees having turnover of more than 500 Crore are obliged to issue all B2B invoice in E-Invoice mode only. Later on, the limit was reduced and it is mandated for all the assessees having a turnover of more than 50 Crore. Though this needs to be clarified that for these assessees, B2C invoice can still be issued as "paper invoice". The provisions related to B2B invoice is also applicable for credit notes, debit notes for B2B and B2G transactions, including exports.

Flow of E-Invoice

The following are the features and updates about the E-Invoicing system in India.

a. A unique Invoice Reference Number (IRN) and QR code is assigned when approving the invoice data, which must always be provided when issuing the paper, PDF, or JSON invoice.

b. Government introduced the utility (through GSTN) where the assessee can upload the excel based invoice and obtain the IRN and QR code for the invoice.

c. The e-invoice Portal returns the signed QR code and signed invoice back to the taxpayers. The standardized e-invoice format, based on international standard (UBL/PEPPOL), has led to machine readability, enhanced interoperability and uniform interpretation in the entire eco-system.

d. There are more than 1,38,000 assessees who fall under the category and have issued E-Invoice in the calendar year 2021. More than 39 crore IRNs were generated in the first six months of introduction of E-Invoice system in India.

[1]https://www.efficiencyleaders.com.au/peppol-e-invoicing/how-does-peppol-work/

Roadmap for E-Invoicing

South Korea

In South Korea the E-invoicing system was introduced in 2011. All companies and individual taxable persons with a turnover of KRW 0.3 billion (approx. $250,000) or more are supposed to issue E-Invoices. The following are the features of E-Invoice system in South Korea: -

a. An issued e-tax invoice must be transmitted to the National Tax Agency (NTS) within one day of its issue

b. Before e-invoices are transmitted, suppliers must digitally sign them with a PKI electronic signature. E-invoices are reported in an XML format at the NTS Portal. Due to the near-real time reporting time-limit, the South Korean e-invoicing system falls under the category of CTC (Compliance with Continuous Transaction Controls).

c. The obligation includes invoices, amended invoices (credit notes and debit notes) covering B2B, B2G, and B2C transactions (under certain circumstances).

d. Cross-border transactions are excluded.

e. Before issuing an electronic invoice, the supplier must be authenticated and registered with the National IT Industry Promotion Agency (NIPA) for the system used to issue and transmit the electronic invoice.

f. The supplier has four different methods to issue electronic tax invoices. These include the NTS (E-Sero Portal) system, ERP system (direct integration), Application Service Provider (ASP), or telephone or the tax office.

g. Failure to deliver the e-tax invoice to NTS could result in a fine of 1% of the taxable amount.

Vietnam

In Vietnam, the E-Invoice system was introduced from November 1, 2020, under an obligation to digitize applicable to most taxable persons who sell goods or provide services in Vietnam. However, this decision was annulled in October by a new e-Invoice law which modified the date of enforcement to July 2022. Currently there is a grace period in which businesses are allowed to use paper invoices. However, most of the Vietnamese companies have already started exchanging invoices electronically because of the government incentives.

As provided, individuals and businesses selling goods and providing services will be expected to issue invoices to the buyer using the standard data format and digitally report all transactions to the Vietnam tax authority irrespective of transaction value. For the same taxpayers can use XML with or without a unique verification code from the tax office. Currently, if opting for e-invoicing, the companies are required to extract and transmit invoice data in XML format to the T-VAN (value-added-network) providers which are local state-financed companies appointed by the Government for invoice check and controls. T-VANs act as an intermediary between taxpayers. They approve and create the final e-invoice before being transmitted to the buyer.

The Government has categorized e-invoices into two types:

- e-invoice with a tax verification code (eligible for tax declarations)
- e-invoice without a tax verification code

E-Invoices without a Tax Verification Code

Companies that can use e-invoice without a tax verification code include those in industries such as

- telecommunication
- electricity
- credit financing
- petroleum, e-commerce
- transportation
- trade
- insurance
- supermarkets

E-Invoices with a Tax Verification Code

The use of electronic invoices with tax verification codes will be extended as a requirement for self-employed individuals and companies with annual turnover of more than VND 3 billion (US$103,400), and more than 10 employees. Sectors that are included in this new rule are agriculture, forestry, fishery, and construction.

Besides these individuals and companies in trade and service industry with revenue of at least VND 10 billion (US$428,000) annually will need e-invoices with tax verification codes as well.

China

The term "fapiao" can be translated as invoice in China, but it also describes official invoices that are administered by the tax authorities and are intended to serve the system for tax tracking. This system is called the "Golden Tax System" and was implemented a few years ago, and is now running in its third version "Golden Tax System III". In China this system has no exception and has created consistency within the tax administration to minimize tax evasion.

E-invoicing applies to all taxable persons providing goods or services in China.

A distinction is made in China between two types of fapiao.

a. General VAT fapiao: This type of invoice is issued as evidence of payment and does not allow VAT deduction. Usually, this type of invoice is used for B2C and tax-free transactions as it is simple and a process for issuing electronic invoices has been in place for several years.

b. Special VAT fapiao: This type of invoice is issued by general taxpayers to customers when they sell goods or provide taxable services. It is also possible to deduct VAT on these invoices and therefore it is normally used for B2B transactions.

Indonesia

Indonesia is also considered one of the pioneers of e-invoicing in Asia. E-Invoice system has been in operation in Indonesia since July 2016, which includes electronic processing of invoices, credit notes, debit notes for B2B and B2G transactions. B2C transactions are excluded.

To use the e-invoicing system, taxpayers must obtain an electronic certificate and then request a series of serial numbers for electronic invoices from the tax administration. All outgoing and incoming invoices must be reported to the tax administration and approved. In the final stage, taxpayers would also report their periodic VAT returns (SPT) electronically. There are three different methods to issue e-faktur pajak (electronic invoices): a desktop application, a web-based application (portal), or a host-to-host application.

Brazil

Brazil is one of the pioneers of E-Invoice System and today globally the highest number of e-invoices are issued in Brazil. Brazil adopted a clearance electronic invoicing model in 2008, where the country's tax authority must give "ok-to-issue" clearance before a supplier can issue it to a payer.

There are different types of electronic invoices, and requirements on content and digital signatures vary by region. There are different types of electronic invoices required, depending on whether they are for goods, services, transport, freight services or electricity:

- Goods (NF-e)
- Services (NFS-e)
- Transport services (CT-e)
- Freight (MDF-e), SPED, REINF
- Electricity supply (NF3e)

Before an e-invoice can be authorized by the tax office responsible for the supplier's regional area, the supplier needs to sign the invoice electronically. This requires a digital certificate, provided by government-accredited local Brazilian certification authorities.

As per Brazil's legal provisions, when goods are in transit, they need to be accompanied by a human-readable PDF version of the XML e-invoice. There are different, specific structures, e.g.

- DANFE for NF-e,
- DACTE for CT-e and
- DANF3E for NF3e.

E-invoices must be electronically archived

- According to Brazilian tax law, invoices must be electronically archived for 5 years.
- These must be SEFAZ-authorized, signed XML documents.
- Furthermore, the related DANFE (etc.) pdf needs to be stored in case of issues with the invoice itself.

Requirement to validate the invoice once issued

Once the buyer has received the invoice, he needs to validate it. In addition to validating the invoice, buyers in certain industries are also required to issue a message in which the buyer states whether the invoice covers what has been provided. This is only shared with the tax authorities, not with the sending party.

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VAT Refund/VAT Free Shopping for Visitors to the EU

by Team OmniVAT

Shopping Destination

One of the unique features of GST(VAT) globally is the revenue neutrality, where in the exports are not taxable in the country of origin but imports are at the destination. Accordingly, Place of Supply provisions are designed to facilitate that and every country has adopted the procedure to grant refund to foreign nationals if they have purchased locally but are taking it along with them on leaving that country; called as VAT refund for visitors. This process also attracts customers to visit a destination for shopping as they get comparative advantage in pricing. There are many jurisdictions which have started the process of establishing kiosks at the airport wherein the foreign nationals before stepping on the foreign territory can get their claim of VAT refund with a small verification process, which makes them a shopping-friendly destination. In addition, there are facilities for foreign nationals to experience VAT free shopping. This article is a study of and a guide on the European Union process relating to VAT refund for visitors to the EU which can also be customised and adopted in other jurisdictions including India.

What is VAT Free Shopping?

Value added tax (VAT) is a multi-stage sales tax, the final burden of which is borne by the private consumer. VAT at the appropriate rate will be included in the price you pay for the goods you purchase. As a visitor to the EU who is returning home or going on to another non-EU country, the Visitor may be eligible to buy goods free of VAT in special shops.

Who is a 'visitor'?

As per EU mandate, a 'visitor' is any person who permanently or habitually lives in a country outside the EU. The visitor's address as shown in the passport or other identity document will be taken as the place where the visitor permanently or habitually live.

Example: Thomas lives and works in Brazil but spends three months every summer in Portugal, where he has a time-share in a villa. Thomas' permanent address is in Brazil, so he is a 'visitor' to the EU while in Portugal.

In some countries, the visitor may also qualify as a 'visitor' if he is living in a EU country for a defined period of time for a specific purpose, but his

permanent home is outside the EU and he is not intending to return to the EU in the immediate future. EU citizens permanently living in non-EU countries are also eligible for the VAT refund.

Example: Paul is a Belgian citizen but lives permanently in Canada. Once a year, he returns to Belgium to visit his parents. Paul is a 'visitor' and can apply for a refund on the basis of his Canadian residence card.

'Tax-free' shopping: how is the VAT refunded?

Can't one just pay the VAT-free price in the shop?

No. one has to pay the full VAT-inclusive price for the goods in the shop and can claim VAT refund once you have complied with the formalities and have shown the proof of export.

Process of Refund Claim in EU

- When the visitors are in the shop, they should ask the shop assistant in advance whether they provide this service.
- Also ask the shop assistant what threshold applies to the purchase in order to be eligible for a refund.
- At the check-out, the shop assistant is obliged to ask the visitor to provide proof that you he/she is a visitor to the EU. The visitor will need to show his passport or other identity document proving his residence outside the EU.
- The shop assistant will ask the visitor to fill in a form with the necessary details. The visitor may be asked to show the return ticket as proof that he is leaving the EU within the required time. The shop assistant will fill in the shop's part of the form.
- Make sure the visitor understands exactly what he needs to do and how he receives the refund. In some cases, the shop itself will refund visitors. In other cases, the shop will use a third party to organise the refunds on its behalf.
- Make sure the visitor understand whether the shop takes an administrative fee for this service (which will be later deducted from the refunded amount) and if so, what is the fee.
- The visitor will receive an invoice for the goods. The visitor must show the invoice, the refund form, the goods and any other necessary documents to the customs officers of the last EU country they leave. The customs officers must stamp the form as proof of export. Without the stamp, the visitor will not obtain the refund.
- The visitor must then follow the steps explained in the refund document or by the shop assistant. The visitor can claim the VAT refund in bigger airports immediately, otherwise the visitor will have to send the refund form to the address given in the shop.

The precise details will depend on how that particular shop organises the refund procedure.

Example: John came from the US for a vacation in Europe. He bought a designer bag in Paris; some clothes and shoes in Milan and Budapest. In each shop, he got refund forms filed. Within a month, John leaves to US from Budapest. At the airport, he shows the purchased goods to the customs officer and gets the refund documents stamped. Some of the refund documents were provided by a refund intermediary-he finds their refund counter in the airport and gets the refund immediately. An administrative cost is deducted from the refund amount. The remaining stamped refund document he has to send back to the shop where he purchased the goods.

Will the Visitor get all the VAT refunded?

This is unlikely. In the great majority of cases, there will be an administrative charge for the service. Make sure the visitor find out how much will be charged when still in the shop.

Can someone else go to the shop for the Visitor?

No. The Visitor must be there in person in order to make a VAT-free purchase, although he is not required to pay for the goods himself.

Will the Visitor have to wait until receipt of the refund?

Not necessarily. In some larger ports and airports, the visitor may be able to obtain a refund straight away once the customs officers have stamped the form, provided the shop in which the visitor bought the goods uses this facility.

Where can the Visitor complain if he/she does not receive the refund?

The visitor can complain to the company from where he bought the goods because this company has a principal responsibility to give the refund. If, that company used an intermediary the visitor may first apply to the intermediary. The European Commission does not intervene in particular cases of VAT refund to foreign visitors.

Can the Visitor buy goods VAT-free from any shop?

No. Shops do not have to offer a VAT-free facility. Those that choose to do so must make the appropriate arrangements with the tax authorities.

How shall the Visitor know whether a shop is a VAT-free shop?

The shop will usually display a prominent sign in the window, advertising that it is a 'tax-free' or 'VAT-free' shop.

Can all goods be bought VAT-free?

No. There are some goods that do not qualify. The facility is intended for goods that could in principle be carried in personal luggage. Goods that have to be exported as freight, for example, cars and yachts are excluded. Some countries may also exclude other categories of goods.

Is there a threshold on each purchase?

To avoid administrative burdens over small-value items, there is a minimum value of EUR 175 (or the equivalent in national currency outside the euro zone) for the total purchase, but EU countries may set lower thresholds. The threshold applies to the total amount of goods bought in a certain shop. Normally, the visitor cannot cumulate purchases in different shops to reach the threshold. The visitor will receive a separate form in each shop in which they buy goods. The visitor can enquire with the national tax authorities on the thresholds applicable in a particular EU country.

How soon do the goods have to leave the EU?

The goods that the visitor buy VAT-free must leave the EU by the end of the third month after that in which it was bought.

Example: Bruce, who lives in Canada, has been on holiday in Italy for two weeks. He buys a designer suit from a VAT-free shop on 10 September. The suit must leave EU territory no later than 31 December.

Does the Visitor need to take the goods with him when he leaves the EU?

Yes. The goods must accompany the visitor when he leaves the EU. The visitor cannot buy VAT-free goods if for any reason, he cannot or does not wish to take the goods with him when leaving the EU. Moreover, the visitor has to be ready to demonstrate those goods to the customs officer who will stamp the VAT refund form.

Does the Visitor have to leave the EU straight-away from the country where he purchased the goods?

No. The visitor can buy VAT-free goods even if he is going to be visiting other EU countries before he finally returns home, as long as he actually leaves the EU with the goods within the time limit. The visitor has to get the documents stamped by a customs officer at the point of exit at the EU – not necessary in the same EU country where he bought it from.

Be careful if the Visitor leaves the EU by train!

The visitor may be able to get the VAT refund documents stamped at certain train stations . However, the visitor might need to get off the train at the last station within the EU to get this stamp. Other methods could also apply, e.g., a customs officer might be boarding the train.

This depends on the trains' route and the internal arrangements in each EU country.

We therefore strongly advise the visitor to consult in advance with the national authorities or refund company on the arrangements applicable.

What if the Visitor did not get a stamp?

In principle, the stamped VAT refund document is obligatory for VAT refund.

GST

CASE STUDY

by Team OmniVAT

ABC Ltd. is a Goods Transport Agency (GTA) having office in Haryana and Delhi. In Haryana company has availed the option to pay tax under forward charge @12% with ITC and in Delhi option to pay tax @ 5% without ITC is availed.

Following are the details provided for the month of March-20 for states of Haryana and Delhi. Read carefully and give detailed solution for the Questions.

Haryana:

Income:	
Particulars	**Taxable Value**
Freight Income	
(Interstate- 10,00,000	
Intra state- 40,00,000	50,00,000
Rental Income	
(Trucks given on rental to a party in Gujarat)	20,00,000
Support Services	
(Live Tracking services for truck)	15,00,000
Advertisement services provided to ABC ltd. Haryana	8,00,000

Expenses & ITC (Including ITC on RCM)				
Particulars	**Taxable Value**	**IGST**	**CGST**	**SGST**
Salary to staff	15,00,000			
Computers Purchased	4,50,000	54,000	13,500	13,500
Trucks Purchased to be given on rent to a party in Gujarat	50,00,000	9,00,000		
Repairs & Maintenance Charges of Truck Legal & Professional Fees	15,00,000		1,35,000	1,35,000
(Amt. paid to Statutory Auditors)	50,000		4,500	4,500
Staff Welfare Expenses (Foods & Beverages for Staff)	10,000		900	900
Security Expenses	15,000		1,350	1,350

Note: -

1. There was a bill amounting to ₹ 5,00,000 for transportation of Agricultural Produce and a bill of ₹ 2,00,000 for transportation of organic manure. The amount is included in above Freight Income. Both are inter-state supplies.

2. The Security Services are received from a person other than a body corporate.
3. There was a Sales Bill (Rental) of Aug-19 amounting to ₹ 20,000 (IGST 3,600) and tax for the same has not paid yet. The amount is included in above sales figure.
4. There was a bill of Repair & Maintenance amounting ₹ 25,000 (CGST 2,250 & SGST 2,250) pertaining to April 19 whose credit is not taken yet. The amount shown above is inclusive of this bill.
5. Out of total support services, Service amounting Rs. 10,00,000 are given to customers located in Gujarat and Maharashtra and others are given to customers located in Haryana itself.

The details of Income and expenses of Delhi Branch are as follows:

Delhi:

Income:	
Particulars	**Taxable Value**
Freight Income	50,00,000

Expenses & ITC				
Particulars	**Taxable Value**	**IGST**	**CGST**	**SGST**
Salary to staff	7,00,000			
Computers Purchased	2,00,000	36,000		
Trucks Purchased	5,00,00		45,000	45,000
Repairs & Maintenance Charges of Truck	20,000	1,800		

Note:

1. Out of above, the services amounting Rs. 15,00,000 are provided to local authority or governmental agencies of Delhi which has taken registration only for the purpose of deducting TDS u/s 51 and services amounting Rs. 10,00,00 are provided to MNP ltd registered in Maharashtra. Rest are services to registered person located in Delhi.

Questions:

1) Calculate tax payable -Direct Charge
2) Calculate tax payable- Reverse Charge
3) Calculate Blocked and Ineligible Credit
4) Calculate Eligible ITC before Rule 42
5) Whether ITC can be availed for the bill of April-19.
6) Calculate Reversal under Rule 42 of Haryana branch, if any.
7) Calculate Net eligible ITC of Haryana after all reversals
8) Calculate interest and late fees, if any.

SOLUTION:

1. Calculation of tax payable – Direct charge

A Goods Transport Agency have the following three situations:

i. Providing services to specified Category Recipient – Applicability of Reverse Charge as per Notification No. 13/2017(rate).

ii. Providing services to other than Specified Category Recipient – Forward Charge @5% without ITC as per Notification No. 11/2017(Rate).

iii. Forward charge with ITC Availment – Forward Charge @12% with availment of ITC as per Notification 20/2017(Rate).

As Per Notification No.13/2017, Supply of Services by a Goods Transport Agency (GTA) [who has not paid central tax at the rate of 6%,] in respect of transportation of goods by road to Specified Category Recipients are treated on Reverse Charge and the Recipient is Liable to pay GST @ 5%.

(a) any factory registered under or governed by the Factories Act, 1948(63 of 1948); or

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or

(c) any co-operative society established by or under any law; or

(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons; or

(g) any casual taxable person.

[Provided that nothing contained in this entry shall

apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, —

(a) a Department or Establishment of the Central Government or State Government or Union territory; or

(b) local authority; or

(c) Governmental agencies,

which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.]

However, as per exemption notification 12/2017-CT Entry 21B service provided by GTA by way of transport of goods in a goods carriage, to

(a) a Department or Establishment of the Central Government or State Government or Union territory; or

(b) local authority; or

(c) Governmental agencies,

which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

Therefore, No GST will be charged on the same

Therefore, in case of Delhi, where the recipient is a Registered person, will be liable to pay tax on RCM basis and XYZ Ltd. will not be eligible for taking ITC of input services used for providing such services. However, RCM provisions will not be applicable on services provided to Body of individual and to local authority or governmental agencies and therefore company will have to discharge tax on forward charge basis and rate of tax for the same will be 5% and ITC on input services availed for providing such services will not be available.

But in case of Haryana, ABC Ltd. has opted to pay tax @ 12% with availment of ITC. Hence XYZ will be liable to pay taxes @12% with full availment of ITC, subject to other provisions related to ITC.

Further as per Notification No. 12/2017(Rate), Services provided by a goods transport agency, by way of transport in a goods carriage of Agricultural Produce and Organic Manure are exempt supplies.

Therefore, following are the taxes required to be paid for the month of March-20.

Haryana:

Particulars	Taxable Value	IGST	CGST	SGST
Freight Income	43,00,000	36,000	2,40,000	2,40,000
Freight Income	7,00,000	0	0	0
Rental income	20,00,000	3,60,000		
Support Services	15,00,000	1,80,000	45,000	45,000
Advertisement Services	8,00,000		72,000	72,000
Total Outward Tax	93,00,000	5,76,000	3,57,000	3,57,000

Net Tax Payable under Forward charge: Tax Type	Tax Payable	ITC-IGST	ITC-CGST	ITC-SGST	Paid using ITC	Paid using Cash
IGST	5,76,000	5,76,000			5,76,000	0
CGST	3,57,000	2,13,252	1,43,748*		3,57,000	0
SGST	3,57,000	1,64,748		1,43,748*	3,08,496	48,504
Total		9,54,000*	1,43,748*	1,43,748*	12,41,496	
ITC Balance		0	0	0		

*Refer Answer-7 for eligible ITC

**It is assumed that balance in electronic credit ledger is zero, therefore, balance tax liability is discharged in cash.

Delhi:

Particulars	Taxable Amount	IGST	CGST	SGST
Services to Governmental Agencies (Exempt)	15,00,000	0	0	0
Services to registered Person				
(GST payable under reverse charge)	35,00,000	0	0	0
Total	50,00,000	0	0	0

2. Tax Payable: Reverse Charge: -

As Per Section 9(3) of CGST Act 2017, the Government has notified through Notification No.13/2017(rate) that if in case the services are provided by way of security services by a person other than a body corporate to a registered person located in the taxable territory will be required to pay tax on reverse charge.

In the present case ABC Ltd. being a registered person located in taxable territory has received Security services from a non-body corporate will be liable to pay tax on reverse charge basis.

RCM Liability is as under:

Particulars	Taxable Value	IGST	CGST	SGST
Security Services	15,000		1,350	1,350

3. Calculation of Blocked and Ineligible Credit:

Haryana

As Per Section 17(5) Foods and Beverages are classified as Blocked Credit.

Particulars	IGST	CGST	SGST
Food & Beverages		900	900

Delhi

As the company has opted to pay tax @5% whole amount of ITC will be ineligible.

Particulars	IGST	CGST	SGST
Ineligible Credit	37,800	45,000	45,000

4. Calculation of Eligible ITC (before reversal under Rule 42) :

Haryana

Particulars	IGST	CGST	SGST
Computers Purchased	54,000	13,500	13,500
Trucks Purchased	9,00,000		
Repairs & Maintenance Charges of Truck		1,35,000	1,35,000

Legal & Professional Fees			
(Amt. paid to Statutory Auditors)		4,500	4,500
Security Expenses (RCM)		1,350	1,350
Total	9,54,000	1,54,350	1,54,350

5. Availability of ITC of April -19

As per Section 16(4) of CGST Act,2017, A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Therefore, in given case ABC Ltd. can take ITC of the bill of April-19 up to the date of filing of return for the month of September 2020.

6. Calculation of Reversal under Rule 42.

As Per Section 17(2) of CGST Act, 2017, Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Haryana

March-20				
Rule 42 Denotations:	**Particulars**	**IGST**	**CGST**	**SGST**
	Total ITC	9,54,000	1,55,250	1,55,250
	CG	9,54,000	13,500	13,500
T	ITC on inputs and input services (Total ITC-CG)	0	1,41,750	1,41,750
T1	Supplies for Personal Purposes	0	0	0
T2	Supplies exclusively for Exempt outward	0	0	0
T3	Blocked credit		900	900
C1	Balance [T-(T1+T2+T3)]	0	140,850	1,40,850
T4	Supplies exclusively for taxable outward	0	0	0
C2	Common credit (C1-T4)	0	1,40,850	1,40,850
D1	ITC allocable for exempt supplies out of common (C2*7,00,000/93,00,000)	0	10,602	10,602
D2*		0	0	0
Exempt Turnover (7,00,000)	7,00,000			
Taxable Turnover (43,00,000+20,00,000				
+15,00,000+8,00,000)	86,00,000			
Total Turnover	93,00,000			
ITC to be reversed		0	10,602	10,602

*It is assumed that no inward supplies are used for non-business purpose therefore Value of D2 is zero.

7. Calculation of Net eligible ITC after all reversals

Particulars	IGST	CGST	SGST
Gross eligible ITC			
(refer answer-4)	9,54,000	1,54,350	1,54,350
Less: Common ITC reversed (refer answer-6)		(10,602)	(10,602)
Net eligible ITC	9,54,000	1,43,748	1,43,748

Note: ITC on Truck purchased has not been reversed under Rule 43 of CGST Rules, 2017 as the such truck are given on rental to a party in Gujarat which is a taxable supply.

8. Calculation of late fees and interest, if any.

As per Section 50(1), Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent.

Interest= 3600*{(20-04-2020) -(20-09-2019)}/365*18% =Rs. 378

UNION BUDGET 2022

KNOW IT ALL ABOUT GST

by Team OmniVAT

Last date to Avail ITC, tax benefit by way of Credit Note & Rectify any Error or Omission in GST Returns extended

1. Last date to avail ITC is proposed to be extended by way of amendment in sub-section (4) of Section 16 by **substituting** erstwhile words "*due date of furnishing of the return under section 39 for the month of September*" to "thirtieth day of November". Amended sub-section

   (4) shall read as under–

   "(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both <u>after the thirtieth day of November</u> following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier:"

2. Similar to above amendment, another amendment is proposed to be brought in sub- section (2) of Section 34 by **substituting** word "*September*" by "*the thirtieth day of November*". Amended sub-section (2) of Section **34** shall read as under –

   "(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit

note in the return for the month during which such credit note has been issued but not later than the thirtieth day of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:"

3. Further, another amendment is proposed to be brought in proviso to sub-section (3) of Section 37 by **substituting** words "*furnishing of the return under section 39 for the month of September*" by "*the thirtieth day of November*". Amended proviso to sub-section (3) of Section 37 shall read as under–

   "(3) ……

   Provided *that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier."*

4. Similar amendment has been proposed in proviso to sub-section (9) of Section 39 which provides for rectification of error or omission in GST return. Amended proviso after **substitution**, as proposed, shall read as –

   "(9) ……

   Provided *that no such rectification of any omission or incorrect particulars shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier."*

5. Another similar amendment has been proposed in proviso to sub-section (6) of Section 52 which provides for rectification of error or omission in another GST return. Amended proviso after **substitution**, as proposed, shall read as –

   "(6) ……

   Provided that no such rectification of any omission or incorrect particulars shall be allowed after the thirtieth day of November following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier."

Commentary – Presently, last date to avail ITC, to avail tax benefit as per credit note(s) issued as well as to rectify errors or omission in return furnished under Section 37 (Form GSTR-1), Section 39 (Form GSTR-3B) & Section 52 (Form GSTR-8 for TCS) is earlier of –

1. Due date of furnishing of return for the month of September following the relevant financial year; or
2. Date of furnishing of relevant annual return.

Whereas a relaxation is proposed to be provided in last dates of all the above by extending last date from erstwhile due date of furnishing of return for the month of September (which was 20th October) to 30th November of next financial year.

Removal of concept of matching of outward supplies & inward supplies

On advent of GST, a mechanism was introduced where a taxpayer had to furnish details of outward supplies, inward supplies, match the details with automated generated returns/statement, accept or reject the details in auto generated returns/statement, i.e. two way communication process in return filing. However, such schema of matching of details of outward & inward supplies was never implemented in GST regime after the introduction of GST till date. Therefore, such a mechanism (and corresponding GST provisions) is proposed to be omitted from the legislature by way of following amendments –

1. *Section* 42, 43 & 43A are proposed to be omitted which currently provides for –
   a. Section 42 – Matching, reversal and reclaim of input tax credit
   b. Section 43 – Matching, reversal and reclaim of reduction in output tax liability
   c. Section 43A – Procedure for furnishing return and availing input tax credit
2. Following amendments are proposed in Section 37 (GSTR-1) in order to do away with matching requirement –

- Words "*shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed*" in Sub-section (1) is proposed to be substituted by words "*shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies*". Amended sub- section (1) shall read as –

"(1) Every registered person, other than an Input Service Distributor, a non- resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall subject to such conditions and restrictions and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies:"

- First proviso to sub-section (1) is proposed to be omitted which currently reads as –

  *"**Provided** that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:"*

- Words "and which have remained unmatched under section 42 or section 43" in sub-section

  (3) are proposed to be **omitted** after which sub-section (3) shall read as –

  "(3) Any registered person, who has furnished the details under sub-section (1) for any tax period ~~and which have remained unmatched under section 42 or section 43~~, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:"

3. Corresponding amendment is proposed in Clause (c) of Sub-section (2) of Section 16 which deals with 'Eligibility & Conditions for taking Input Tax Credit' by omitting words "or Section 43A". Amended clause (c) shall read as –

   "(c) subject to the provisions of section 41 ~~or section 43A~~ the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and"

4. Similar amendment is proposed in Sub-section (2) of Section 49 which deals with 'Payment of Tax, Interest, Penalty & Other Amounts' by **omitting** words "*or Section 43A*". Amended sub-section (2) of Section 49 shall read as –

   "(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41 ~~or section 43A~~, to be maintained in such manner as may be prescribed."

***Note** – Since Section 38 of CGST Act, 2017 also pertains to furnishing of inward return which is a part of matching mechanism, the same is also substituted in entirety and has been covered as a separate topic in later part of this budget analysis.

New Mechanism to avail ITC

Changes in Section 38 and corresponding changes

1. Consistent with the above proposed amendments for removal of matching mechanism, Section 38 of the CGST Act, 2017 which currently provides for "Furnishing details of Inward Supplies" is also proposed to be **substituted in entirety** to read as–

   "38. Communication of details of inward supplies and input tax credit.

(1) The details of outward supplies furnished by the registered persons under sub-section

(1) of section 37 and of such other supplies as may be prescribed, and an autogenerated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of–

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,–

(i) by any registered person within such period of taking registration as may be prescribed; or

(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said subsection during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or

(vi) by such other class of persons as may be prescribed."

2. To give effect to amended Section 38 of CGST Act, 2017, following further amendments in other provisions are proposed –

- The pre-conditions listed in Section 16(2) of CGST Act, 2017 for availing Input Tax Credit (ITC) by any registered person have been proposed to be increased by way of **inserting** clause (ba) in sub-section (2) which provides for –

  "(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;"

- Words "Subject to the provisions of section 37 and 38, if" in sub-section (9) of Section 39 (GSTR-3B) are proposed to be **substituted** by words "Where" and shall read as –

  "(9) Where any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars [in such form and manner as may be prescribed][3], subject to payment of interest under this Act:"

- Words "or inward" & "or section 38" in sub-section (1) of Section 47 are proposed to be **omitted** and shall read as –

  "(1) Any registered person who fails to furnish the details of outward ~~or inward~~ supplies required under section 37 ~~or section 38~~ or returns required under section 39 or section 45 or section 52 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees."

- Words "the details of inward supplies under section 38" used in sub-section (2) of Section 48 are proposed to be omitted and shall read as –

  "(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, ~~the details of inward supplies under section 38~~ and the return under section 39 or section 44 or section 45 [and to perform such other functions in such manner as may be prescribed."

- Words "*sub-section (2) of section 38*" used in Section 168 which provides for 'Power to issue instructions or directions' are also proposed to be **omitted**.

Commentary – In order to do away with two–way communication process in return filing, i.e. filing of details of inward supplies, matching the same with details of outward supplies filed by the vendor/ supplier, etc. (which was never implemented), Section 38 has been proposed to be substituted fully.

New Section 38 provides for amended/new Form GSTR-2A/2B where details of inward supplies is communicated to the taxpayer with a bifurcation as to which ITC is admissible to the taxpayer and what all ITC cannot be taken by a taxpayer owing to reasons, such as –

a. Vendor/Supplier has defaulted in payment of output taxes; or,

b. Output tax shown by vendor/supplier in its GSTR-1 exceeds by output tax shown in GSTR- 3B by a prescribed limit; or,

c. Vendor has availed ITC more than what is admissible to him, by a prescribed limit.

In line with this amendment in Section 38, a new condition is proposed to be added in Section 16(2), which provides for condition for availing ITC and clause (ba) provides that only such ITC can be availed by a taxpayer which has been shown as admissible in amended/new Form GSTR-2A/2B.

Further, pursuance to amendment in Section 38, amendments is proposed to be made in other sections so as to remove references to Section 38 therefrom.

Changes in Section 41

Commentary – Earlier, as per Section 41, ITC was availed 'provisionally' in E-credit ledger on self-assessment basis.

However, Section 41 is proposed to be substituted in entirety to do away with availment of ITC on self-assessment basis on provisional basis. Further, it is amended to bring provision for reversal of ITC (with interest) in case where tax thereon is not deposited by the supplier/vendor with Government exchequer and re-availment thereof in future upon supplier/vendor depositing the tax with Government exchequer. Amended Section 41 shall read as –

> *"Availment of input tax credit*
>
> *41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.*
>
> *(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:*
>
> *Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed."*

Restrictions for utilizing ITC (to the extent it can be utilized

Background – Rule 86B was inserted in CGST Rules, 2017 vide Notification No. 94/2020 – Central Tax dated 22 December 2020 w.e.f. 01 January 2021 and provided that only 99% ITC can be utilized while making payment of output taxes and 1% output tax has to be mandatorily paid by way of cash. This restriction was applicable only when output tax liability in a month was more than Rs. 50,00,000/- and was subject to certain exceptions as listed therein.

However, there was no power given in the statute to restrict the quantum of ITC which can be 'utilized' by a taxpayer for payment of his output tax liability and thus, constitutional validity of Rule 86B without any power in the Act was under question. One such matter was **R/Special Civil Application No. 917 of 2021** filed in the matter of **M/s AAP & Co. v. Union of India** before Hon'ble Gujarat High Court challenging the constitutional validity of Rule 86B.

Thus, in order to grant power to the Government to restrict amount of ITC that can be 'utilized' for payment of output tax, following amendments in Section 49 are proposed –

1. Words "*and restrictions*" proposed to be **inserted** in sub-section (4) which shall read as –

   > *"(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and restrictions and within such time as may be prescribed."*

2. In order to give effect to 'restriction' contained in Rule 86B in statute, sub-section (12) is proposed to be **inserted** which shall read as –

   > *"(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed."*

Commentary – Though, sub-rule (12) is proposed to be inserted, however, since it will be inserted prospectively from a date to be notified (after 01 February 2022 only) while Rule 86B was inserted w.e.f. 01 January 2021, validity of Rule 86B during the intervening period & demand notices/departmental enquiries in pursuance of Rule 86B issued during this intervening period will still be litigative/debatable.

Sequential filing of GSTR-1

1. Certain conditions as may be prescribed by way of Rules is sought to be brought subject to which return of outward supplies (GSTR-1) shall be filed by a taxpayer. For the same, words "*subject to such conditions and restrictions and*" are proposed to be inserted in sub- section (1) of Section 37. Amended sub-section (1) will read as –

"(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, subject to such conditions and restrictions and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:"

2. New condition has been proposed to be inserted as sub-section (4) in Section 37 which provides that –

"(4) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods."

Commentary – Power has been given to Government to notify/bring in certain 'conditions and restrictions' subject to which return under Form GSTR-1 shall be furnished by a taxpayer in future.

Further, as per newly introduced sub-section (4), a taxpayer cannot furnish GSTR-1 for a tax period if such taxpayer has not furnished GSTR-1 for previous tax periods. This has been done with an intent to provide for period – wise sequential filing of GSTR-1. However, Government may notify some class of taxpayers who will be allowed to furnish GSTR-1 for a tax period even if they have not furnished prior period's GSTR-1, subject to such conditions & restrictions, as may be notified.

New restrictions while filing GSTR-3B

1. Due date of furnishing of return by a non-resident taxable person is proposed to be reduced from erstwhile 20th of next month to 13th of next month. For the same, word "twenty" is proposed to be substituted by word "thirteen" in sub-section (5) of Section 39 and shall read as –

"(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty thirteen days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier."

2. Proviso to sub-section (7) is proposed to be substituted as –

"(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

~~***Provided*** *that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:*~~

Provided *that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,–*

(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed."

3. Words "*has not been furnished by him*" in sub-section (10) is proposed to be **substituted** as and a proviso in sub-section (10) is proposed to be **inserted** which shall read as –

"(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him. or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

***Provided** that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under subsection (1) of section 37 for the said tax period."*

Commentary – Presently, GSTR-3B cannot be filed by a taxpayer till the time the self-assessed tax as per GSTR-3B is not paid by such taxpayer to Government exchequer. However, proviso to section 39(1) provide option to file GSTR-3B on quarterly basis to certain notified class of registered persons. Such taxpayers can pay their monthly tax liability either in the Fixed Sum

Method (FSM) (NN 85/2020-CT dated 10 November 2020) or use the Self-Assessment Method (SAM).

Under FSM, the taxpayer must pay an amount of tax mentioned in a pre-filled challan in the form GST PMT-06 for an amount equal to 35% of the tax paid in cash.

S. No	Type of Taxpayer	Tax to be paid
1	Who furnished GSTR-3B quarterly for the last quarter	35% of tax paid in cash in the preceding quarter
2	Who furnished GSTR-3B monthly during the last quarter	100% of tax paid in cash in the last month of the immediately preceding quarter

Therefore, to align sub-section (1) and (7), an option is proposed to be provided to the taxpayer by way of substitution in proviso to sub-section (7) to pay either the self-assessed tax or '**an amount as may be prescribed**' in order to file GSTR-3B.

With respect to another amendment, presently, by virtue of sub-section (10) in Section 39, if a taxpayer has not furnished prior period GSTR-3B, he will not be eligible to furnish current month's GSTR-3B. Another restriction has been added in sub-section (10) that GSTR-3B for a particular period cannot be filed until GSTR-1 for the same period is not filed by the taxpayer. The above restrictions are explained with an example as under –

For instance, if a taxpayer wishes to file GSTR-3B for the month of September 2022, all the previous period's GSTR-3B must be filed by such taxpayer and also, GSTR-1 for the month of September 2022 must be filed prior to filing GSTR-3B for the said month.

However, certain exceptions to this newly inserted condition (of filing GSTR-1 in advance for the same tax period) can be carved out by the Government by way of notification.

Reduction in Rate of Interest

1. Sub-section (3) of Section 50 is proposed to be substituted with retrospective effect to provide levy of interest in case where ITC is wrongly availed and utilized. Sub-section (3) of Section 50 shall read as –

   ~~*"(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council."*~~

   "(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed."

2. Further, corresponding amendment is also proposed to be brought in Notification No. 13/2017 – Central Tax dated 28 June 2017 by way of **reducing rate of Interest from 24% to 18% under sub-section (3).** Similar amendment is brought in Notification No. 06/2017 – Integrated Tax dated 28 June 2017 and Notification No. 10/2017 – Union Territory Tax dated 30 June 2017.

Commentary – Presently, sub-section (3) provides that interest will be levied in case of undue or excess

claim of ITC as per matching mechanism, i.e. two way communication of return filing process. However, since the same is intended to be done away with in Finance Bill, 2022, the interest is levied on **retrospective basis w.e.f. 01 July 2017** in cases where Input Tax Credit is wrongly availed **and** utilized.

Here it is pertinent to note that Interest as per sub-section (3) is to be levied only where ITC is **both availed as well as utilized** and not in cases where ITC is only availed by the taxpayer and not utilized for payment of output tax liability. This amendment is in line with decision taken in 45th GST Council Meeting.

Changes in 'Refund' Provisions

1. Words "the return furnished under section 39 in such" in proviso to sub-section (1) of Section 54 is proposed to be substituted by words "such form and". Amended proviso which relates to refund of balance in e-cash ledger shall read as –

   "Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in ~~the return furnished under section 39 in such~~ such form and manner as may be prescribed."

Commentary – At present, though proviso to sub-section (1) provides for filing of refund of balance in e-cash ledger through GSTR-3B (Section 39), though, due to non-availability of any mechanism and column in GSTR-3B, refund applications under this category are being filed and processed through a separate refund application in Form RFD-01 (i.e., similar to other applications) and not through GSTR-3B and thus, this amendment is brought to rectify the statute.

2. Time period for filing refund under sub-section (2) of Section 54 **extended** from six month to 2 years by way of **substitution**. Amended sub-section (2) shall read as –

   "(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of ~~six months~~ two years from the last day of the quarter in which such supply was received."

3. Words "under sub-section (3)" in sub-section (10) of Section 54 is proposed to be omitted which shall thereafter read as –

   "(10) Where any refund is due ~~under sub-section (3)~~ to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-

   (a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

   (b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law."

Commentary – Effect of omission of words "under sub-section (3)" is that power to withhold refund application of a taxpayer which was erstwhile available only in case of refund filed under sub-section (3), i.e. in cases of refund of accumulated ITC on account of 'zero rated supplies' and 'inverted duty structure' **has now been extended to all refund applications**.

In simple words, proper officer will now be empowered to either withhold refund application of a taxpayer or deduct an amount from the refund sought/admissible, in case of all refund applications, irrespective of the category under which such refund is filed by the taxpayer.

4. Sub-clause (ba) is proposed to be **inserted** in Clause (2) of Explanation to Section 54 which shall read as –

   "(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;"

Commentary – Specific 'relevant date' for the purpose of filing refund claim defined for cases wherein zero-rated supply is made to SEZ unit or developer.

Presently, it falls under residual sub-clause (h), i.e. last date of filing refund in case of zero rated supplies to SEZ is two years from the 'date of payment of tax'. However, post amendment, last date of filing refund in case of zero rated supplies to SEZ shall be two years from the 'the due date of furnishing GSTR-3B in which such supplies was made'.

Amendment in scenarios wherein proper officer can cancel GST registration of a taxpayer

Two amendments are proposed to be carried out in sub-section (2) of Section 29 which contains 5 scenarios wherein a proper officer can cancel registration of a registered taxpayer.

1. Words "*returns for three consecutive tax periods*" in Clause (b) are proposed to be **substituted** by the words "*the return for a financial year beyond three months from the due date of furnishing the said return*".
2. Further, words "*a continuous period of six months*" in Clause (c) are also proposed to be **substituted** by the words "*such continuous tax period as may be prescribed*".

Amended sub-section (2) of Section 29 shall read as –

> *"29. Cancellation or suspension of registration.*
> *(1) ……*
>
> *(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,–*
>
> *(a) a registered person has contravened such provisions of the Act or the rules made there under as may be prescribed; or*
>
> *(b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or*
>
> *(c) any registered person, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed; or*
>
> *(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or*
>
> *(e) registration has been obtained by means of fraud, willful misstatement or suppression of facts:"*

Commentary – Until F.Y. 2018-19, registered persons paying tax under the provisions of Section 10 (Composition Scheme) were supposed to file Quarterly returns in Form GSTR-4. However, vide Notification No. 20/2019 – Central Tax dated 23 April 2019, Rule 62 of CGST

Rules was amended and quarterly return for composition taxpayers was replaced with a one single return for every financial year, and in addition to that Form CMP-08 was introduced for furnishing the payment of self-assessed tax on quarterly basis.

However, pursuant to amendment made by aforesaid Notification in Rule 62, corresponding amendment was not made under Section 29 of CGST Act, wherein one of the clauses give the power to proper officer to cancel the registration if Composition taxpayer does not file the return for three consecutive tax periods.

Now in order to align the provisions of Section 29 with the changes made in Rule 62 of the CGST Rules, Finance Bill, 2022 has proposed to amend Section 29 of the Act wherein Proper officer can proceed to cancel the registration if registered Composition taxpayer did not file the return (Form GSTR-4) for a financial year beyond three month from the due date.

Similarly, an amendment is proposed to be brought for other registered assessees [other than the ones paying tax under composition levy (Section 10)] whose registration can be earlier cancelled when no GST return is filed by such assessee for continuous period of 6 months. However, now such time period for which if returns are not furnished, GST registration can be cancelled by the proper officer, shall be defined separately by way of Rules.

Late fee proposed to be introduced for delay in filing GSTR-8 (TCS return) as well

Earlier, late fee as per Section 47(1) of Rs. 100/day (of CGST & SGST each) subject to a maximum of Rs. 5,000/- (of CGST & SGST each) was prescribed for delay in filing GSTR-1 (Section 37), GSTR-3B (Section 39) and GSTR-10 (Section 45).

Now the same is proposed to be extended to GSTR-8 also which is filed as per Section 52 by inserting words "*or section 52*" in sub-section (1) of Section 47. Amended sub-section (1) of Section 47 shall read as –

> *"(1) Any registered person who fails to furnish the details of outward supplies required under section 37 or returns required under section 39 or section 45 or section 52 by the due date*

shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees."

Transfer of balance of E-cash Ledger

In order to give effect to 45th GST Council Meeting decision regarding allowing transfer of E- cash ledger's balance within distinct persons having same PAN & different GSTIN, sub- section (10) of Section 49 is proposed to be substituted in entirety and to read as –

"(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,–

(a) integrated tax, central tax, State tax, Union territory tax or cess; or

(b) integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, subsection (5) of section 25,

in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

***Provided** that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register."*

Retrospective exemption to certain activities

1. **Retrospective exemption** is proposed to be granted to '*supply of unintended waste generated during the production of fish meal (falling under heading 2301), except for fish oil*', during the period 01 July 2017 to 30 September 2019.

   However, it has been provided that no refund of tax already paid on such supply shall be granted. Therefore, such exemption is brought for such cases wherein no tax is paid by a taxpayer on such supply during 01 July 2017 to 30 September 2019.

2. By way of Notification No. 25/2019 – Central Tax (Rate) dated 30 September 2019, it was notified that "*service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called by the State Governments*" shall be treated neither as supply or goods nor supply of services.

   This notification (and corresponding Notifications under IGST Act & UTGST Act) is proposed to be given **retrospective effect** from 01 July 2017. However, it has again been provided that no refund of tax already paid on such supply shall be granted. Therefore, such effect is brought for such cases wherein no tax is paid by a taxpayer on such supply during 01 July 2017 to 30 September 2019.

www.gst.gov.in notified as common portal

As per Section 146 of the CGST Act, 2017, the Government may notify the Common Goods and Services Tax Electronic Portal for –

a. facilitating registration,

b. payment of tax,

c. furnishing of returns,

d. computation and settlement of integrated tax,

e. electronic way bill, and

f. for carrying out such other functions and for such purposes as may be prescribed.

For point no. (a) to (d), Government has already notified www.gst.gov.in as the Common GST Electronic Portal and for point no. (e), Government has notified www.ewaybillgst.gov.in as the Common GST Electronic Portal (NN 9/2018-CT dated 23.01.2018). Further, for generation of e-invoices also, Common GST Electronic Portal has been notified vide NN 69/2019-CT dated 13.12.2019.

Now, NN 9/2018 – CT dated 23.01.2018, is proposed to be amended so as to notify www.gst.gov.in, retrospectively, with effect from 22nd June, 2017, as the Common GST Electronic Portal, **for all functions** provided under Central Goods and Services Tax Rules, 2017, other than those provided for e-way bill and for generation of invoices under sub-rule *(4)* of rule 48 of the CGST Rules.

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