CA - Inter

Amendments – Nov 2019

Major Amendments in –

- Supply
- Registration
- Composition Scheme
- Input Tax Credit
- Payment of Tax
- Reverse Charge
- Exemption

By Prof Jimit Doshi

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CA Inter (Nov 19)
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Contents

Chapter 1 - Supply Under GST

Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

Amendments in Supply related concepts

1) *Definition of term business amended [Section 2(17)(h) of the CGST Act]*

- For a transaction to qualify as 'supply', **it is essential that the same is** 'in the course or furtherance of business'. This implies that any supply of goods and / or services by a business entity would be liable to tax, **so long as it is in the course of or furtherance of business.**

- **Supplies which are not in the course of business (or in furtherance of business) will not qualify as 'supply' for the levy of GST [eg hobbies] [except for import of service for a consideration : this is for OIDAR Sr]**

Pre – amendment	Post - amendment
"Business" includes— (h) SERVICES provided by a RACE CLUB by way of • totalisator or • a licence to book maker … in such club;	"Business" includes— (h) ACTIVITIES of a RACE CLUB including by way of • totalisator or • a licence to book maker or ACTIVITIES of a licensed book maker in such club;

Totalisator - a device showing the number and amount of bets staked on a race, to facilitate the division of the total among those backing the winner.

Business to include all activities of race club

- ***The term "services" in this clause leads to ambiguity, as actionable claims have been defined as 'goods' in the CGST Act. Hence, now the word "activities" has been used.***

- ***Further the activities of licensed book maker were earlier not included in definition of Business. Only the activities of race club were included. Hence the definition of business under S. 2(17)(h) has been expanded to include following activities:***
  a) Activities of race club
  i) By way of totalisator
  ii) License to book Maker
  b) Activities of a licensed Book Maker in such club
  [Changes are being made to ensure that all activities related to a race club are included]

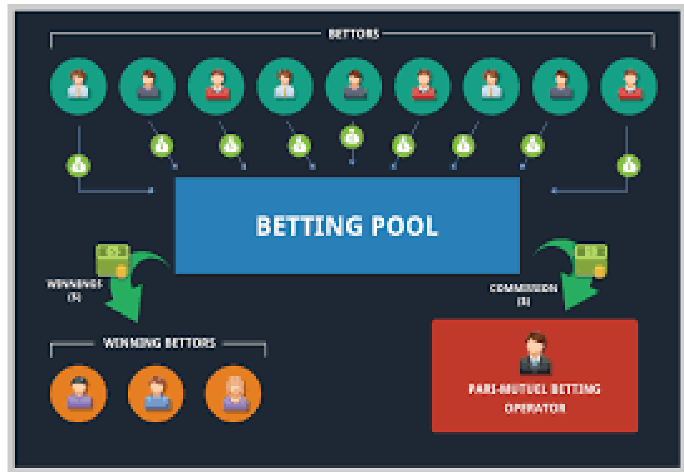
Betting at Horse Race **[For your knowledge]**

There are two ways one can bet at the races - either on the tote (short for totalizator, the automated system that runs betting) with fluctuating odds and payouts, or with the bookmakers.

Option 1: Bets are placed on the totalizator (also called tote)

At a tote window, a win amount is arrived at only after the race is over.

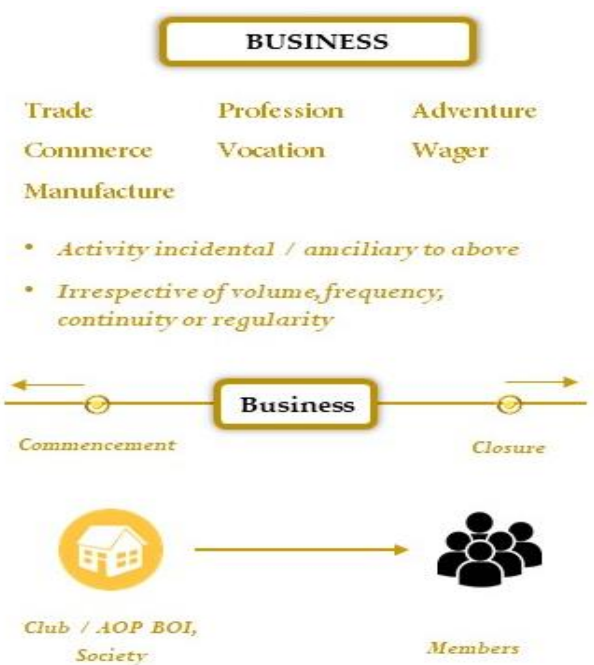
The total amount - collected after accepting bets on each horse of a given race – is distributed among successful bets after deducting a commission shared by the government and the host club.



- *Suppose there are 10 horses in a given race and total being collected after the races is Rs 1 lakh.*
- *The club will deduct its own share and the government's taxes.*
- *Suppose, the deduction on win is 28 per cent, of which the club's share is 8% and the government takes away 20%.*
- *Therefore, an amount of 28,000 will be deducted from the collected Rs 1 lakh.*
- *The remaining Rs 72,000 will be distributed as dividend to the people who have successfully nominated the winner.*
- *Suppose there were only four people who had predicted the winner, then each winner stands to get Rs 18,000.*

Option 2: Bets are placed with the bookies.

The advantage of placing your bets with bookies is that the odds are fixed in advance, so you know exactly how much you will get if you win.



⇒ Admission to any premises

⇒ Services supplied as an holder of an office

⇒ Activities of a race club incl. by way of totalisator or a licence to book maker or

⇒ ACTIVITIES of a licensed book maker in such club;

⇒ Any activity or transaction undertaken by the CG, SG or any LA in which they are engaged as public authorities

2) *Definition of term service amended [Section 2(102) of the CGST Act]*

Pre – amendment	Post - amendment
⦿ "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;	⦿ Same as before
	⦿ Explanation – For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities

- *Since securities are excluded from the definition of both 'goods' and 'services' in the CGST Act, they are neither goods nor services.*
- *However, facilitating or arranging transactions in securities is liable to GST. In order to clarify the same, this explanation has been inserted.*
- *The definition of service merely excludes "securities" per se and therefore, facilitating or arranging transaction in securities were not excluded from scope of services*

Example: If some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged in relation to transactions in securities, the same would be a consideration for provision of service and chargeable to GST.

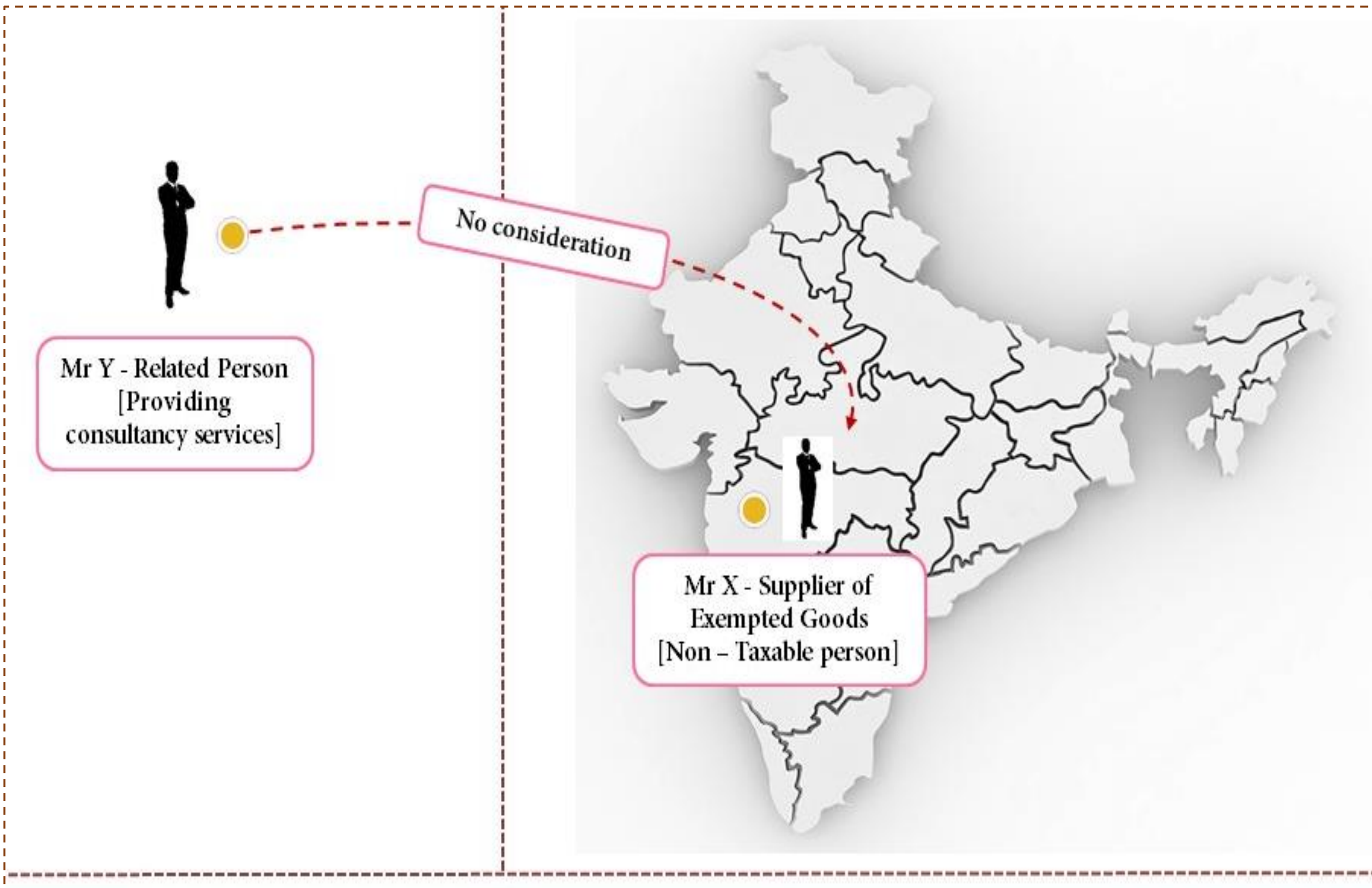
3) *Import of service without consideration from a related party/establishment outside India in course of furtherance of business to be deemed to be supply even if such service is received by a person other than a taxable person [Schedule I of the CGST Act – Para 4]*

Pre – amendment	Post - amendment
⦿ Para 4 – Schedule 1 Import of services … by a TAXABLE person … from a related person, or from any of his other establishments outside India, … in the course or furtherance of business:	⦿ Para 4 – Schedule 1 Import of services … by a ~~TAXABLE~~ PERSON … from a related person, or from any of his other establishments outside India, … in the course or furtherance of business:

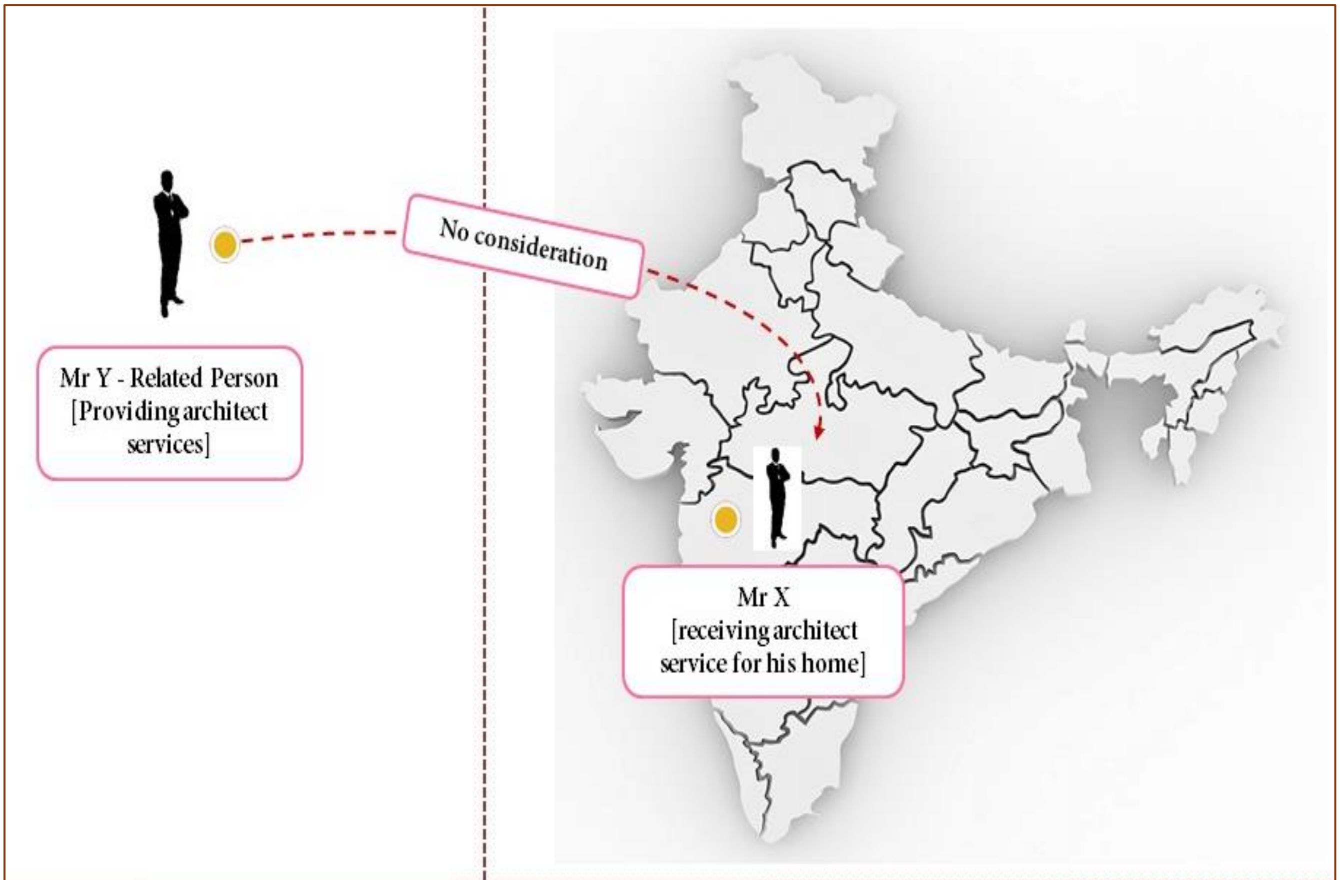
- **Taxable person under GST is anyone who is registered under GST or required to be registered under GST.**
- **Thus, Business entity who are providing only exempted supplies of goods or services are not taxable person.**
- **The word 'taxable person' has been substituted by 'person'.**

Impact -

- *Import of services by entities which are not registered under GST (say, they are only making exempted supplies) but are otherwise engaged in business activities is taxed when received from a related person or from any of their establishments outside India.*
- *Thus, if person importing services is exempted from tax in India, then, import of service from related / deemed distinct person is taxable w.e.f 1st Feb, 2019.*



Impact -
This transaction is now regarded as Supply [Sch I Para 4 will now get trigger].
Import of Service + without consideration + by a person + from related person + in the course of business
Now, Mr X needs to register and pay tax on these services under RCM



Impact -
This transaction is Not a Supply [Sch I Para 4 will not get trigger since it is not in the course of business].
Import of Service + without consideration + by a person + from related person ~~+ in the course of business~~
Now, Mr X need not register.

Significant Notifications/ Circulars/ Orders

1) ***Clarification on scope of principal and agent relationship under Schedule I of CGST Act in the context of del-credere agent (DCA)***

Del-Credere is an Italian word which means – of belief or of trust.
DCA is a sales agent who guarantees that a buyer is trustworthy and, in case the buyer defaults, compensates the principal (the seller). To cover such risks, del credere agents charge higher than normal commission rates.

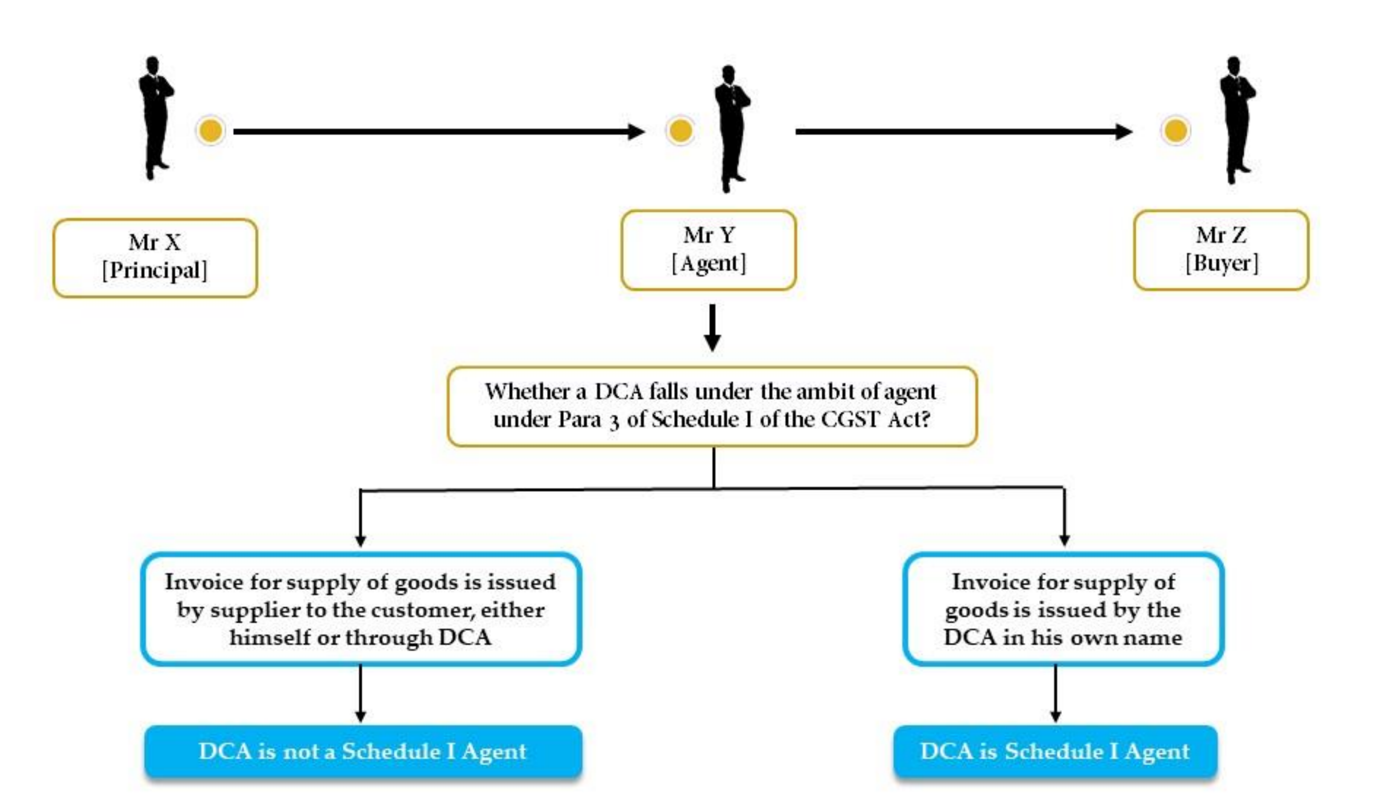
⇨ Circular No. 57/31/2018 GST (dated 4th Sep, 2018) clarified that the key ingredient for determining whether a principal agent relationship falls within the scope of Para 3. of Schedule I of the CGST Act, would be whether the invoice for the further supply of goods on behalf of the principal is being issue d by the agent or not.

- Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said para.
- However, where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act.

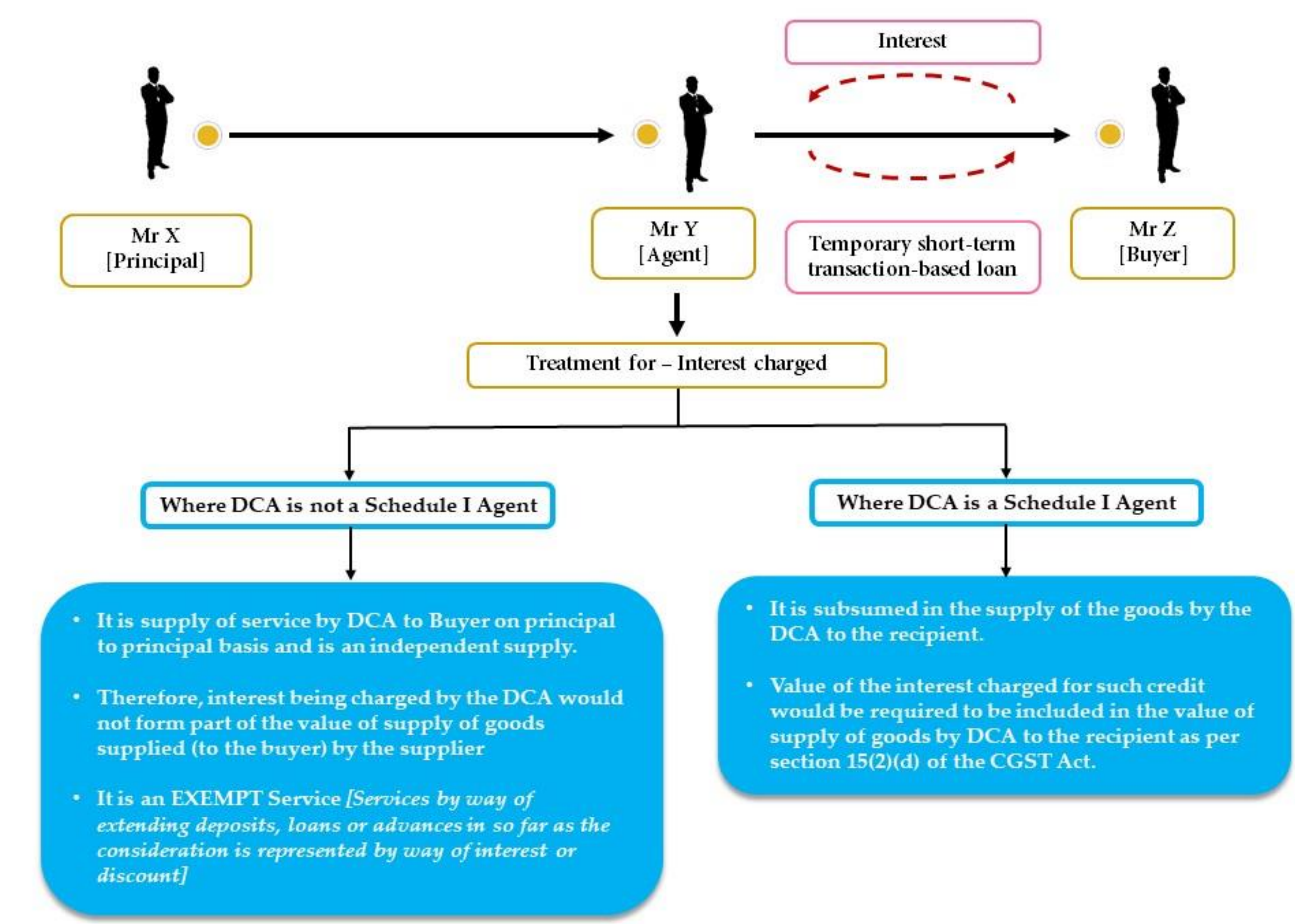
⇨ Circular No. 73/47/2018 GST (Dated 5th Nov, 2018) has clarified the scope and ambit of principal agent relationship in the context of a del-credere agent (DCA).

Who is a DCA	*In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier.* *In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent.* *In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date.* *This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer.*

Issue: Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?



Treatment for : Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied



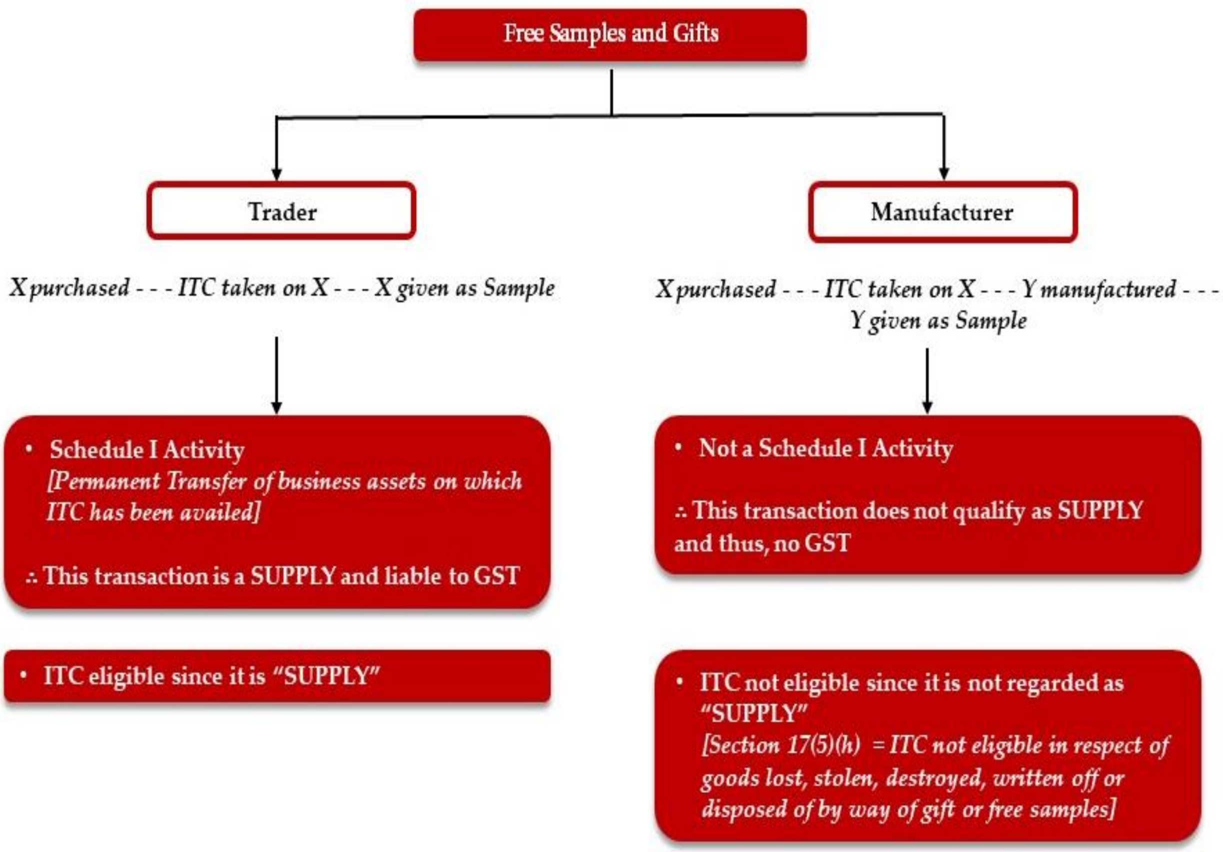
2) ***Clarification on various doubts related to treatment of sales promotion schemes under GST.***

⇨ It has been noticed that there are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Taxability of two such schemes has been clarified as under:

Clarification as to treatment of Free samples and gifts:
• **It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.**   • **It is clarified that samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the said Act.**

- **Section 17(5)(h) provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.** ***Thus, it is clarified that ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration.***

- **However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.**



<u>Clarification as to treatment of Buy one get one free offer:</u>

- **Sometimes, companies announce offers like 'Buy One, Get One free'.**
  For example, "buy one soap and get one soap free" or "Get one tooth brush free along with the purchase of tooth paste".

- **As per section 7(1)(a) of the CGST Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the CGST Act).**

- **It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.**

- **Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the CGST Act.**

- **It is clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.**

Chapter 2 – Charge of GST

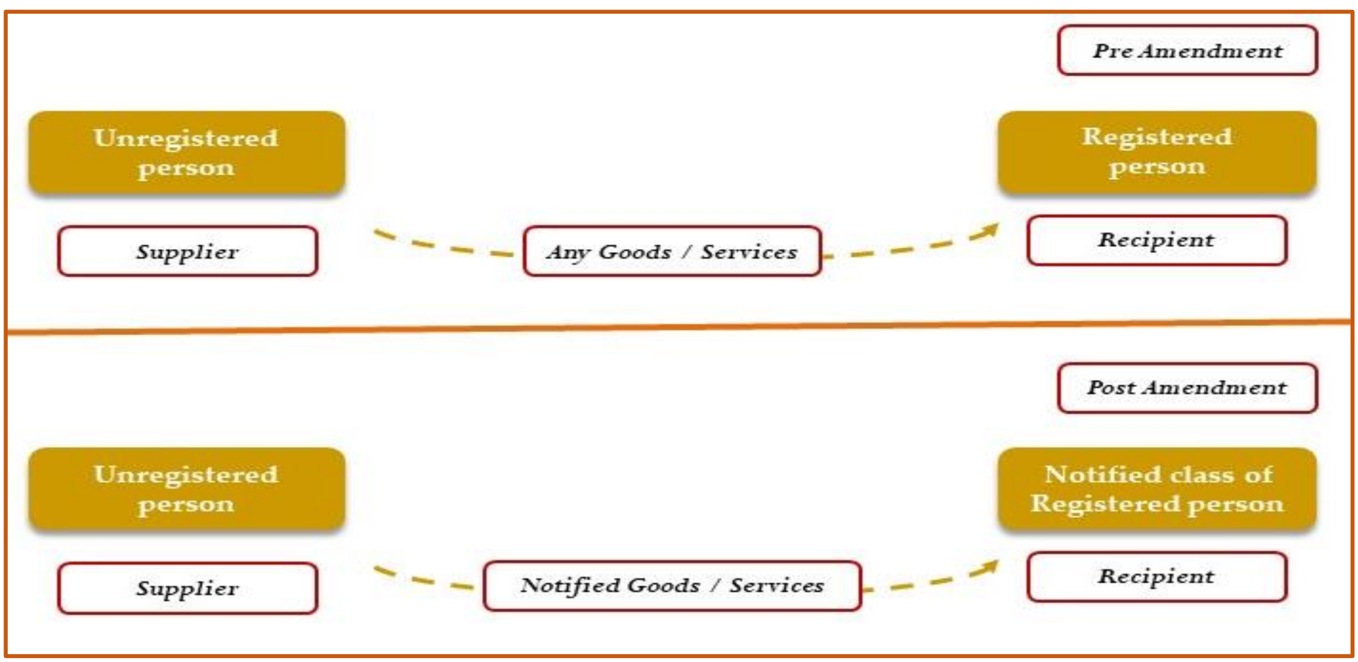
I. Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019 unless otherwise specified

Amendments in RCM

1) *Reverse charge on inward supplies from unregistered persons [Section 9(4) of the CGST Act]*

⇨ Section 9(4) of the CGST Act, which mandated all registered persons to pay the tax on reverse charge basis on intra-State purchases made from unregistered persons, was under suspension.

Pre – amendment	Post - amendment
The central tax in respect of the supply of taxable goods or services or both … by a supplier, who is not registered, … to a registered person shall be paid by such person on REVERSE CHARGE basis as the recipient … and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. *[Exempt upto 30th Sept, 2019]*	The CG may, upon the recommendation of the Council, by notification, … specify a class of registered persons who shall, … in respect of supply of specified categories of goods or services or both … received from an unregistered supplier, … pay the tax on reverse charge basis as the recipient of the goods or services or both, … and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both



Similar amendment has also been carried out in section 5(4) of the IGST Act by the IGST (Amendment) Act, 2018.
Consequently, tax under reverse charge is payable by the NOTIFIED class of registered persons on NOTIFIED categories of inter-State supplies of goods and/or services received by such registered persons from any unregistered supplier.

Impact –

	Pre – amendment	Post - amendment
Purchase by	Any registered person	Notified class of registered person
Purchase from	Any unregistered supplier	Any unregistered supplier
Tax payable on	All Intra – State Supply	Notified categories of Intra – State supply

Notifications / Circulars

Sec 9(3) / 5(3) RCM through notification – Amendment in Entries / Insertion of Entries

1) ***Amendment in the RCM provisions applicable to GTA***

effective from 01.01.2019

Description of Services	Supplier of Services	Recipient of Services
Transportation Service	Goods Transport Agency (GTA) … who has not paid GST at the rate 12% (cumulative)	a) Factory b) Any registered society c) Any co-operative society d) Any registered taxpayer under GST e) Any Body corporate f) Any partnership firm (whether registered or not), LLP or AOP g) Any Casual Taxable Person; *[Specified Recipients]* Govt Departments registered only for TDS purpose – Not liable to RCM [w.e.f. 1st Jan 2019] Nothing contained in entry (d) shall apply to services provided by a GTA, by way of transport of goods in a goods carriage by road to- a) a Department/establishment of the Central Government/ State Government/ Union territory; or b) local authority; or c) Governmental agencies, which has taken registration under the CGST Act only for the purpose of deducting tax u/s 51 and not for making a taxable supply of goods or services.

✪ *It may be noted that the said services have been simultaneously exempted from payment of tax vide Notification No. 28/2018 CT (R) dated 31.12.2018. Thus, there will be no tax liability in this case.*

Conclusion -

For Specified Categories -

a) If GTA charges GST in his tax invoice and pays IGST @ 12% [or CGST @ 6% plus SGST/UTGST @ 6%], the recipient is not liable to pay GST under reverse charge.

b) If GTA is unregistered or does not charge GST in his invoice, the recipient is liable to pay IGST @ 5% [or CGST @ 2.5% plus SGST/UTGST @ 2.5%]

For Non-Specified categories – [Unregistered person not covered above + Govt department registered for TDS purpose] -

c) In case of services supplied to unregistered person not covered above and Govt Departments registered for TDS purpose, the service is exempt. Thus, the GTA itself is never liable to pay tax, except where the GTA opts to pay tax under forward charge @ 12% [6% plus 6%].

Unregistered GTA (not availing ITC)				
GST Registered person	a) Factory registered under Factories Act b) Any registered society c) Any co-operative society d) Any Body corporate e) Any partnership firm (whether registered or not), LLP or AOP f) Any Casual Taxable Person (registered);	Unregistered CTP	Govt Departments registered only for TDS purpose	Other unregistered persons
RCM @ 5%	**RCM @ 5%**	**Exempt (Entry No 21A)**	**Exempt (Entry No 21B)**	**Exempt (Entry No 21A)**

Registered GTA (Availing ITC)				
GST Registered person	a) Factory registered under Factories Act b) Any registered society c) Any co-operative society d) Any Body corporate e) Any partnership firm (whether registered or not), LLP or AOP f) Any Casual Taxable Person (registered);	Unregistered CTP	Govt Departments registered only for TDS purpose	Other unregistered persons
FCM @ 12%	**FCM @ 12%**	**Exempt (Entry No 21A)**	**Exempt (Entry No 21B)**	**Exempt (Entry No 21A)**

✪ *With effect from 01.01.2019, a new clause has been inserted in the Explanation to reverse charge notifications stipulating that the provisions of this notification, in so far as they apply to CG, SG, shall also apply to the Parliament and State Legislature.*

- *"In simple words, Parliament and State Legislatures will be treated at par with the CG/SG, for RCM purposes. Where CG/SG are not liable to RCM, the same principle/provision will apply to the Parliament and State Legislature.*

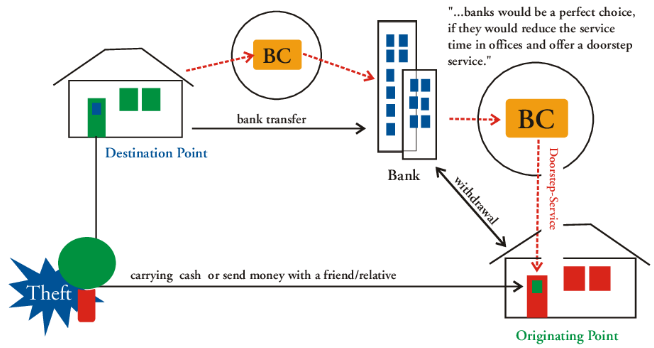
2) New services under RCM u/s 9(3) / 5(3)

[Effective from 01.01.2019]

Category of Supply of Service	Supplier of service	Recipient of Service
Services supplied • **by Business facilitator** • **to a banking company**	**Business Facilitator (BF)**	**A banking company, located in the taxable territory**
Services supplied • **by an agent of business correspondent** • **to business correspondent.**	**An agent of business correspondent (BC)**	**A business correspondent (BC), located in the taxable territory**

Concept of Business Correspondent and Business Facilitator

- *In Jan 2006, the Reserve Bank of India issued a new set of guidelines allowing banks to employ two categories of intermediaries - Business Correspondents (BCs) and Business Facilitators (BFs) - to expand their outreach.*
- *Business Correspondents (BCs) & Business Facilitators (BFs) are representatives appointed by banks to act as their agent and provide banking services in remote locations where the bank does not have a presence in order to promote financial inclusion.*
- *The fundamental difference in the role of the BC and BF is that BCs are permitted to carry out regular transactions for customers on behalf of the bank.*



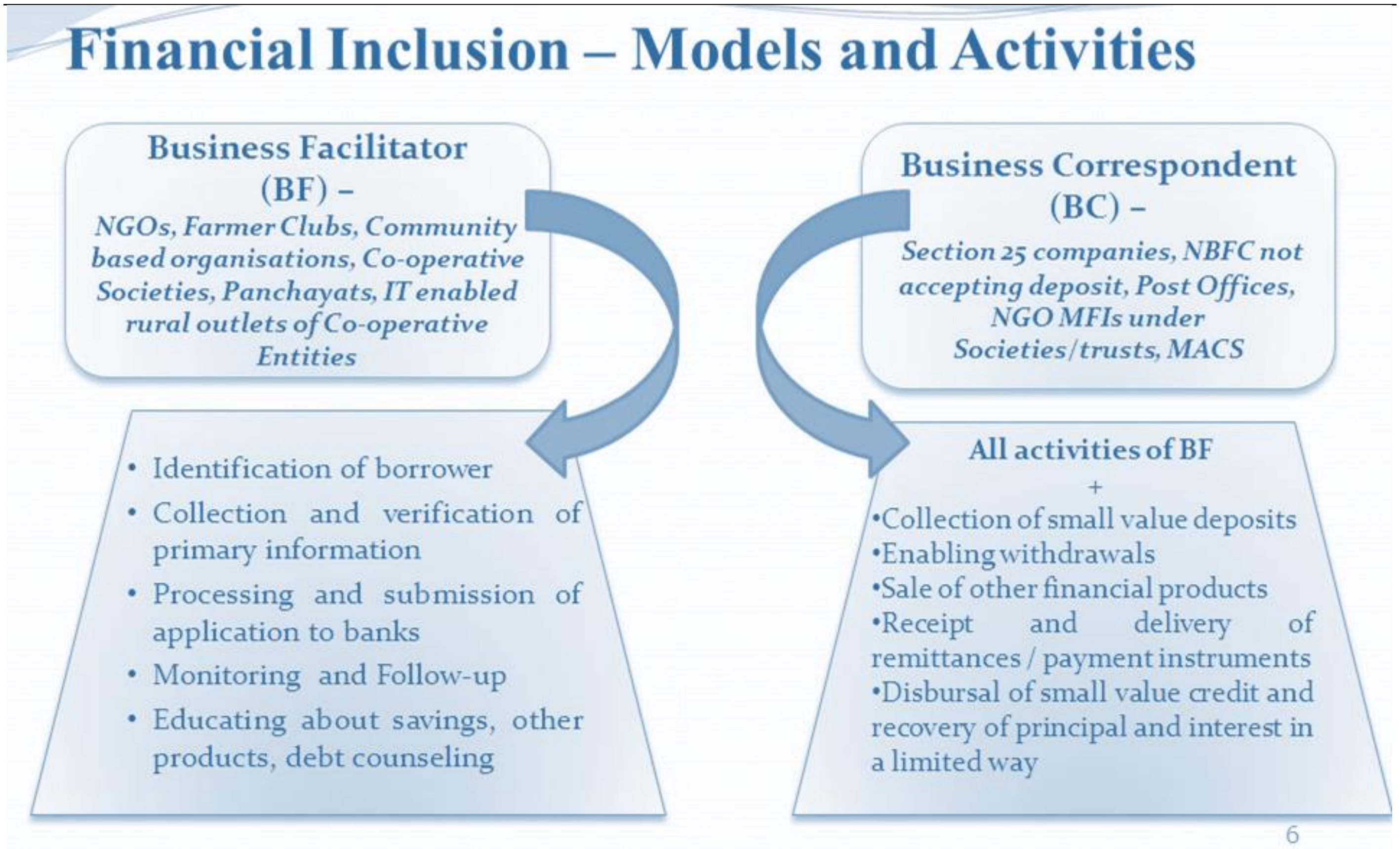
- ***BFs are only responsible for spreading awareness related to banking and bank's products, assisting the bank in business generation activities and recovery of bad debts. However, they do not undertake any cash transactions***

Business Facilitator/ Business Correspondent

means an intermediary appointed under ***business facilitator model or the business correspondent model*** *by a banking company or an insurance company under the guidelines issued by RBI.*

Payment flow for this model –

- *For the channel to become financially viable, regulations require that all revenue from the services be collected by the bank.*
- *BF and BC are not permitted to charge fees to clients for the services.*
- *The bank's revenue may come from the extension of services: accounts, savings, credit and payments.*
- *The Bank under contractual relationships then makes payment of service charges to BF and BC*



<u>Clarification on value to be adopted for computing GST on services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company</u>

Circular No. 86/05/2019 -GST - dated 1st Jan, 2019
Issue: What is the value to be adopted for the purpose of computing GST on services provided by BF/BC to a banking company?
Clarification: • *As per RBI's Guidelines, banks may pay reasonable commission/fee to the BC, the rate and quantum of which may be reviewed periodically.* • *The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner.* • *The arrangements of banks with the BCs specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the BF/BC.* • *Hence, banking company is the service provider in the BF model or the BC model operated by a banking company as per RBI guidelines. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via BF or BC.*

[Effective from 01.01.2019]

<table>
<tr><th>Category of Supply of Service</th><th>Supplier of service</th><th>Recipient of Service</th></tr>
<tr><td>Services supplied
⇒ by way of supply of security personnel provided
• to a GST registered person.</td><td>Any person other than a body corporate</td><td>A registered person, located in the taxable territory.</td></tr>
<tr><td colspan="3">No RCM on – (a) Govt Entities registered only for TDS purpose; or (b) Composite Dealers
Nothing contained in this entry shall apply to security services provided to:
(i)
(a) a Department or Establishment of the CG or SG or Union territory; or
(b) Local Authority; or
(c) Governmental agencies,
which has taken registration under the CGST Act, 2017
… only for the purpose of deducting tax u/s 51 and
… not for making a taxable supply of goods or services.

(ii) a registered person paying tax under Sec 10 of the CGST Act (i.e., composition supplier).</td></tr>
</table>

[Effective from 01.04.2019]

Category of Supply of Service	Supplier of service	Recipient of Service [Person liable to pay GST]
Services supplied • by any person • by way of transfer of ⇒ Development rights or ⇒ Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any Person	Promoter
Long term lease of land (30 years or more) • by any person ⇒ against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.	Any person	Promoter

Explanation:

Apartment	shall have the same meaning as assigned to it in u/Sec 2(e) of the Real Estate (Regulation and Development) Act, 2016
Promoter	shall have the same meaning as assigned to it in u/Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016
Project	shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP).

Real Estate Project (REP)	shall have the same meaning as assigned to it in in u/Sec 2(zn) of the Real Estate (Regulation and Development) Act, 2016
Residential Real Estate Project (RREP)	Shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP
floor space index (FSI)	Shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built

3) *Amendments in GST in real estate sector*

⇒ Earlier, the effective rate of GST on real estate sector was 8%/12% with ITC. With effect from 01.04.2019, the effective rates of GST for the new projects have been brought down to a large extent.

⇒ However, the promoters/builders have been given a one-time option to continue to pay tax at the old rates on ongoing projects (buildings where construction and actual booking both have started before 01.04.2019) which have not been completed by 31.03.2019.

⇒ New effective rates of GST for the new projects by promoters are as follows:

1) New rate of 1% without ITC on construction of affordable houses (area 60 sqm in metros/ 90 sqm in non-metros and value upto Rs 45 lakh).
2) New rate of 5% without ITC shall be applicable on construction of:
   a) all houses other than affordable houses, and
   b) commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

⇒ Conditions:

Above tax rates shall be available subject to following conditions:

a) Input tax credit shall not be available.
b) 80% of inputs and input services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be purchased from registered persons

✪ **However, if value of inputs and input services purchased from registered supplier is less than 80%, PROMOTER has to pay GST on reverse charge basis, under section 9(4) of the CGST Act, at the rate of 18% on all such inward supplies** (to the extent short of 80% of the inward supplies from registered supplier).**

✪ **Further, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement on reverse charge basis, under section 9(4) of the CGST Act, at the applicable rate which is 28% (CGST 14% + SGST 14%) at present.**

✪ **Moreover, GST on capital goods shall be paid by the promoter on reverse charge basis, under section 9(4) of the CGST Act at the applicable rates.**

[For your knowledge – for better understanding]

GST Rate –

SN	Description of Services [Construction of -]	Type of Project	New GST Rate	Whether ITC eligible
1	Affordable residential apartments	Residential Real Estate Project (RREP)	1%	No
2	Residential apartments other than affordable residential		5%	No
3	Commercial apartments (shops, offices, godowns etc.)		5%	No
4	Affordable residential apartments	Real Estate Project (REP)	1%	No
5	Residential apartments other than affordable residential		5%	No
6	Commercial apartments (shops, offices, godowns etc.)		12%	Yes

Note:

1) The above rates are applicable in situations where the builder has not opted for old tax rates
2) No ITC would be available means GST would be payable by way of cash payment only.
3) Affordable Housing = Residential Apartment with specified carpet area (area 60 sqm in metros/ 90 sqm in non-metros). and further with a value cap (value cap of 45 Lakhs)
4) Residential real estate project (RREP) is a real estate project in in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.
Illustration - XYZ developers are constructing a project consisting of residential apartments, shops and office spaces. The total carpet area of the project, i.e., REP is 1,00,000 square feet (sft.) out of which the carpet area earmarked for shops is 8000 sft., and that of offices is 6000 sft. Total carpet area of commercial space is 14000 sft., or 14%. Since, the carpet area allocated for commercial space is less than 15%, the project can be termed as RREP. If the same is more than 15%, then it is other than RREP.

<u>The following conditions are applicable project wise, in case, the project is a fresh project or the promoter has not chosen old tax rate in respect of an ongoing project.</u>

➔ 80% of value of input and input services should be received from registered supplier:
In each project, the promoter has to procure supplies at least to an extent of 80% of the value of input and input services from a registered supplier in any given financial year or up to the date of issuance of completion certificate or its first occupation.
Wherever in a financial year or at the time of completion certificate/its first occupation (whichever is earlier), such 80% threshold is not met, tax has to be paid by the builder on shortfall @ 18%.

➔ Notwithstanding the above, in cases where cement is purchased from unregistered supplier (URD), the builder shall be liable to pay tax at applicable rates, i.e.,28 % at present. The same has to be paid month-wise

Let‶s see few illustrations to understand the condition of 80%in detail:

1. Examples for 80% fulfillment: (total value of inputs – 100 lacs)
A promoter has procured following goods and services [other than capital goods and services by way of grant of development rights, long term lease of land or FSI] for construction of a residential real estate project during a financial year.

Sl. No.	Name of input	From registered dealer (in lacs)	From registered URD (in lacs)
1	Sand	10	
2	Steel	20	
3	Cement		15
4	Bricks	15	
5	Tiles	10	
6	Paints	5	
7	Sanitary ware	25	

Total purchases from registered dealer is Rs 85 Lacs. Though first condition of 80% is fulfilled, the second condition of procuring cement from registered dealer (RD)is not fulfilled. Hence, he has to pay tax @ 28% on cement.

2. Examples for 80% fulfillment (total value of inputs – 100 lacs)
A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

Sl. No.	Name of input	From registered dealer (in lacs)	From registered URD (in lacs)
1	Sand	10	
2	Steel	20	

3	Cement	15	
4	Bricks		15
5	Tiles	10	
6	Paints		5
7	Sanitaryware	25	

Total purchases from Registered dealer is Rs 80 Lacs. Even cement was procured from RD. No need to pay any tax.

3. <u>Examples for 80% fulfillment:(total value of inputs – 100 lacs)</u>

Sl. No.	Name of input	From registered dealer (in lacs)	From registered URD (in lacs)
1	Sand	10	
2	Steel	20	
3	Cement		15
4	Bricks		15
5	Tiles	10	
6	Paints		5
7	Sanitaryware	25	

Total purchases from Registered dealer is Rs 65 Lacs. If he pays tax on cement, it comes to 80 lacs. Hence, he has to pay tax on 15 lacs @ 28%.

4. <u>Examples for 80% fulfillment:(total value of inputs – 100 lacs)</u>

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

Sl No	Name of input goods and Services	Percentage of input goods and services received during the financial year	Whether input procured from registered supplier? (Y/ N)
1	Sand	10	N
2	Cement	15	N
3	Steel	15	Y
4	Bricks	10	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc	10	Y
8	Aluminium windows	15	N
9	Ply, commercial wood	10	N

In this example, the promoter has procured 50 per cent. of goods and services from a GST registered person. However, he has procured sand, cement and aluminum windows, ply and commercial wood etc. from an unregistered supplier. Thus, value of goods and services procured from registered suppliers during a financial year falls short of threshold limit of 80 per cent.
To fulfill his tax liability on the shortfall of 30 per cent. from mandatory purchase, the promoter has to pay GST on cement at the applicable rate on reverse charge basis.
After payment of GST on cement, on the remaining shortfall of 15 per cent., the promoter shall pay tax @ 18 per cent. under RCM.

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer exempt from GST

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.

The liability to pay tax on TDR, FSI, long term lease (premium) has been shifted from land owner to builder under the reverse charge mechanism (RCM) – as discussed in detail in point 2.(b)(4)/(5) above.

Chapter : Registration

Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019, unless otherwise specified

Amendments in the threshold limit for registration

1) Section 22 : Persons liable for registration.

Pre – amendment	Post - amendment
⦿ Every supplier shall be liable to be registered under this Act - in the State or UT, other than Special Category States, - from where he makes a taxable supply of goods or services or both, - if his aggregate turnover in a financial year exceeds Rs 20 Lakhs ⦿ Provided that where such person makes taxable supplies of goods or services or both from any of the SPECIAL CATEGORY STATES, - he shall be liable to be registered - if his AGGREGATE TURNOVER in a financial year exceeds Rs 10 Lakhs	⦿ Same as before ⦿ Same as before ⦿ Provided further that - the Government may, at the request of a SPECIAL CATEGORY STATE and on the recommendations of the Council, - enhance the aggregate turnover referred to in the first proviso from Rs 10 Lakhs to such amount, not exceeding Rs 20 Lakhs - and subject to such conditions and limitations, as may be so notified
Explanation.— For the purposes of this section,— the expression "SPECIAL CATEGORY STATES" shall mean the States as specified in Article 279A(4)(g) of the Constitution except the State of Jammu and Kashmir	Explanation.— For the purposes of this section,— the expression "SPECIAL CATEGORY STATES" shall mean the States as specified in Article 279A(4)(g) of the Constitution except the State of Jammu and Kashmir [and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand].

<table>
<tr><th><u>Pre – amendment</u></th><th><u>Post - amendment</u></th></tr>
<tr><td>Special Category States for purpose s of Sec 22 = 10 states :

States of

Arunachal Pradesh,
Assam,
Manipur,
Meghalaya,
Mizoram,
Nagaland,
Sikkim,
Tripura,

Himachal Pradesh and
Uttarakhand</td>
<td>Special Category States for purposes of Sec 22 [w.e.f. 1-2-2019] = 4 states :

Manipur,
Mizoram,
Nagaland and
Tripura.

[Road – Trip – Ram - Money]</td></tr>
</table>

- As per section 22, the threshold limit for registration - for States other than Special Category States is Rs 20 lakh and for Special Category States is Rs 10 lakh.
- 11 Special Category States are specified in Article 279A(4)(g) of the Constitution namely, States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.
- However, earlier explanation (iii) to section 22 defined Special Category States for the purpose of said section as States as specified in article 279A(4)(g) of the Constitution except the State of Jammu and Kashmir. Thus, Jammu and Kashmir was not a Special Category State for the purpose of section 22. Remaining other States were Special Category States.
- The definition of Special Category States as contained in said explanation has been amended. As a result of the amendment, now, only Mizoram, Tripura, Manipur and Nagaland are Special Category States for the purpose of section 22 *[Road – Trip – Ram - Money]*
- Arunachal Pradesh, Assam, Jammu and Kashmir, Meghalaya, Sikkim, Himachal Pradesh and Uttarakhand are not the Special Category States for said purpose.

Threshold for Registration as specified u/Sec 22 [Summary]

	Upto 31-1-2019	From 1-2-2019
States of Manipur, Mizoram, Nagaland, and Tripura [4 states] *[Road – Trip – Ram - Money]*	Rs. 10 lakhs	Rs. 10 lakhs (may be enhanced upto Rs 20 lakh by notification)
States of Arunachal Pradesh, Assam, Meghalaya, Sikkim, Himachal Pradesh and Uttarakhand	Rs. 10 lakhs	Rs. 20 lakhs
Other states [including J&K]	Rs. 20 lakhs	Rs. 20 lakhs

Corresponding amendment in other notifications –

Exemption from registration - Supplies of Services through ECO Notification - N/N 65/2017 -CT -dated 15th Nov, 2017 Amended by – N/N 06/2019 CT dated 29.01.2019
The persons • making supplies of services (other than supplies specified u/Sec 9(5) of CGST Act) through an ECO who is required to collect tax at source u/Sec 52 of the CGST Act, and • having an aggregate turnover, to be computed on all India basis, not exceeding Rs 20 lakh rupees in a financial year (Rs 10 lakhs in case of Special Category States, other than J&K) are notified as the category of persons exempted from obtaining registration under GST law.

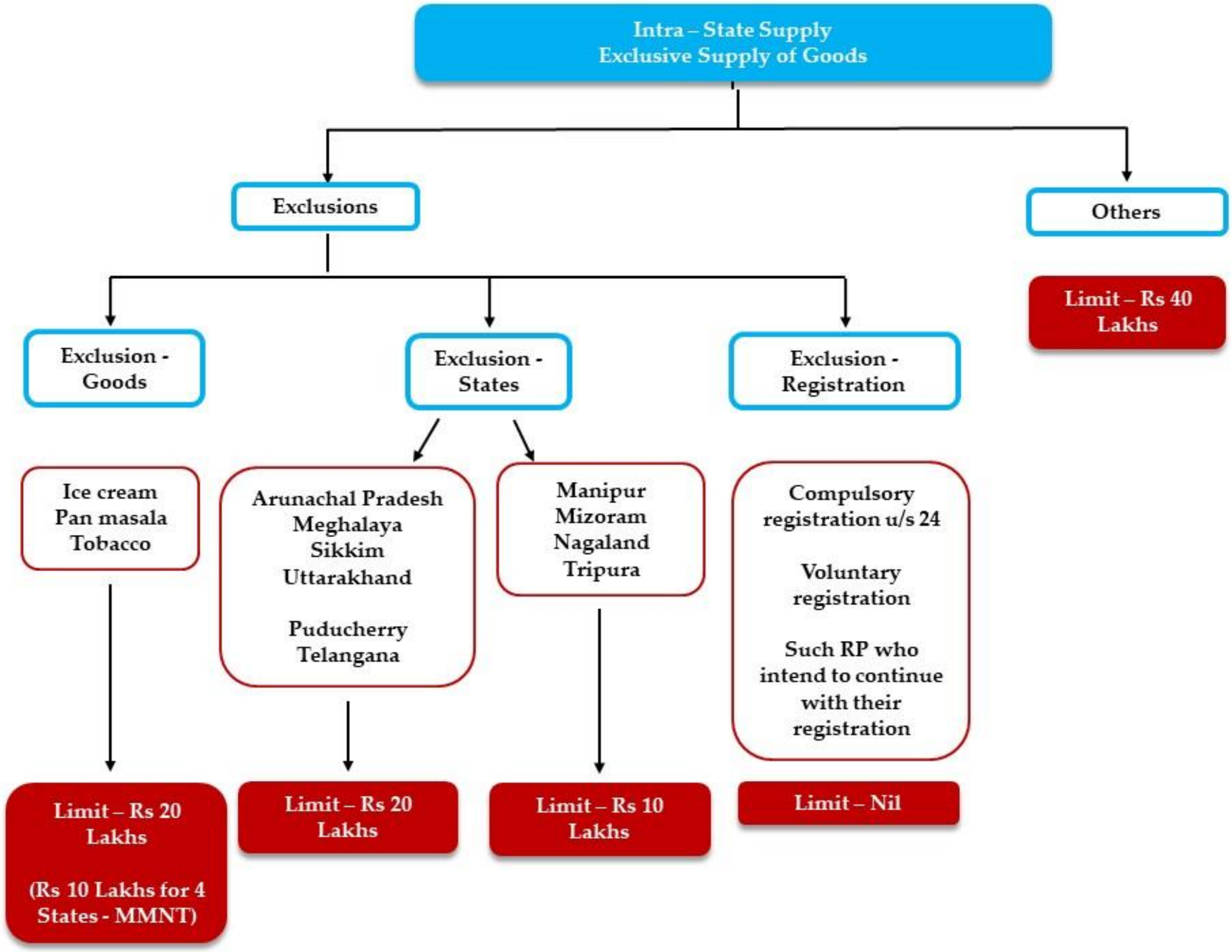
Exemption from registration - Inter-State supply of Any service [for Service Providers] Notification - N/N 10/2017 -IT -dated 13th Oct, 2017 Amended by – N/N 03/2019 IT dated 29.01.2019
The persons • making inter-State supplies of taxable services and • having an aggregate turnover, to be computed on all India basis, not exceeding Rs 20 lakh rupees in a financial year (Rs 10 lakhs in case of Special Category States, other than J&K) are notified as the category of persons exempted from obtaining registration under GST law.

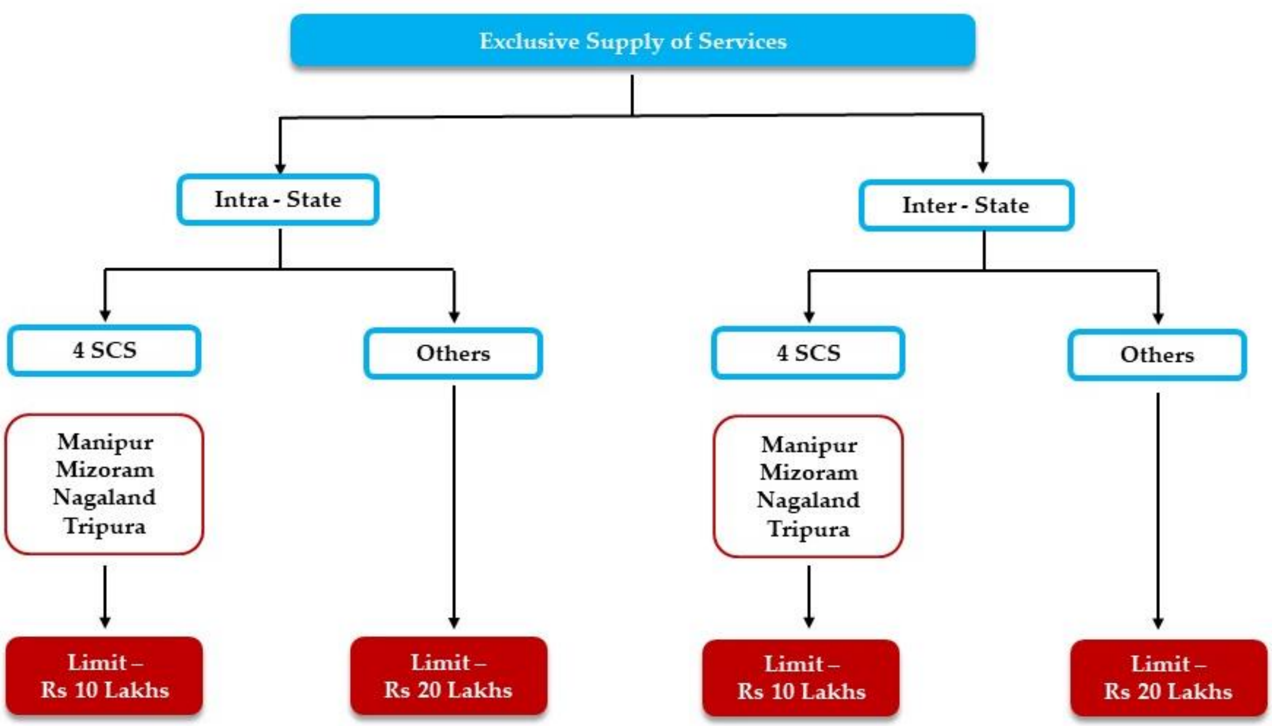
2) Section 23 : Persons not liable for registration.

Notified class of persons:

(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

Notification No. 10/2019 CT w.e.f 1st April, 2019	
Persons covered	Persons not covered
Any person who is engaged in EXCLUSIVE supply of GOODS + whose aggregate turnover in the financial year does not exceed Rs 40 lakh	⦿ Persons required to take compulsory registration u/s 24 of the CGST Act. ⦿ Persons engaged in making supplies of • Ice cream and other edible ice, whether or not containing cocoa [2105 00 00], • Pan masala [2106 90 20] and • Tobacco and manufactured tobacco substitutes (all goods of Chapter 24) *[desserts]* ⦿ Persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Puducherry, Manipur Meghalaya, Telangana, Mizoram Sikkim, Nagaland Uttarakhand, Tripura *[4 + 2 + 4 = 10 States]* *Inter-State supplies of goods are nevertheless liable to compulsory registration and are thus covered in exception (i) above.* ⦿ Person who has opted for voluntary registration or such registered persons who intend to continue with their registration under the CGST Act.


Intra – State Supply
Exclusive Supply of Goods
Exclusions
Others
Limit – Rs 40 Lakhs
Exclusion - Goods
Exclusion - States
Exclusion - Registration
Ice cream
Pan masala
Tobacco
Arunachal Pradesh
Meghalaya
Sikkim
Uttarakhand
Puducherry
Telangana
Manipur
Mizoram
Nagaland
Tripura
Compulsory registration u/s 24
Voluntary registration
Such RP who intend to continue with their registration
Limit – Rs 20 Lakhs
(Rs 10 Lakhs for 4 States - MMNT)
Limit – Rs 20 Lakhs
Limit – Rs 10 Lakhs
Limit – Nil


Exclusive Supply of Services
Intra - State
Inter - State
4 SCS
Others
4 SCS
Others
Manipur
Mizoram
Nagaland
Tripura
Manipur
Mizoram
Nagaland
Tripura
Limit – Rs 10 Lakhs
Limit – Rs 20 Lakhs
Limit – Rs 10 Lakhs
Limit – Rs 20 Lakhs

	Special Category States			Other States	
	Manipur Mizoram Nagaland Tripura	Arunachal Pradesh Meghalaya Sikkim Uttarakhand	Jammu and Kashmir Assam Himachal Pradesh	Puducherry Telangana	All other States
Goods [Limit for registration]	Rs 10 Lakhs	Rs 20 Lakhs	Rs 40 Lakhs	Rs 20 Lakhs	Rs 40 Lakhs
Services [Limit for registration]	Rs 10 Lakhs	Rs 20 Lakhs	Rs 20 Lakhs	Rs 20 Lakhs	Rs 20 Lakhs

Position after amendment - - - **Threshold limit for persons engaged**			
		exclusively in supply of goods	in supply of services/ both goods and services
States other than Special Category States	Puducherry	Rs 20 lakh	Rs 20 Lakh
	Telangana	Rs 20 lakh	Rs 20 Lakh
	Others	Rs 40 lakh	Rs 20 Lakh

Position after amendment - - - **Threshold limit for persons engaged**				
			exclusively in supply of goods	in supply of services/ both goods and services
Special Category States as per Constitution	Special Category States as per Sec 22	Manipur	Rs 10 lakh	Rs 10 Lakh
		Mizoram	Rs 10 lakh	Rs 10 Lakh
		Nagaland	Rs 10 lakh	Rs 10 Lakh
		Tripura	Rs 10 lakh	Rs 10 Lakh
	Others	Jammu and Kashmir	Rs 40 lakh	Rs 20 Lakh
		Assam	Rs 40 lakh	Rs 20 Lakh
		Himachal Pradesh	Rs 40 lakh	Rs 20 Lakh
		Arunachal Pradesh	Rs 20 Lakh	Rs 20 Lakh
		Meghalaya	Rs 20 Lakh	Rs 20 Lakh
		Sikkim	Rs 20 Lakh	Rs 20 Lakh
		Uttarakhand	Rs 20 Lakh	Rs 20 Lakh

ICAI – Statutory Updates				
Supplier	Engaged	Aggregate Turnover	Applicable threshold limit for registration	Whether liable to obtain registration?
Prithiviraj of Assam	exclusively in supply of shoes	Rs 22 lakhs	Rs 40 lakhs	✘
	exclusively in supply of pan masala	Rs 22 lakhs	Rs 20 lakhs	✓
	exclusively in supply of taxable services	Rs 22 lakhs	Rs 20 lakhs	✓
	in supply of both taxable goods and services	Rs 22 lakhs	Rs 20 lakhs	✓
Shivaji of Telangana	exclusively in supply of toys	Rs 22 lakhs	Rs 20 lakhs	✓
	exclusively in supply of ice cream	Rs 22 lakhs	Rs 20 lakhs	✓

	exclusively in supply of taxable services	Rs 22 lakhs	Rs 20 lakhs	✓
	in supply of both taxable goods and services	Rs 22 lakhs	Rs 20 lakhs	✓
Ashoka of Manipur	exclusively in supply of paper	Rs 12 lakhs	Rs 10 lakhs	✓
	exclusively in supply of tobacco	Rs 12 lakhs	Rs 10 lakhs	✓
	exclusively in supply of taxable services	Rs 12 lakhs	Rs 10 lakhs	✓
	in supply of both taxable goods and services	Rs 12 lakhs	Rs 10 lakhs	✓

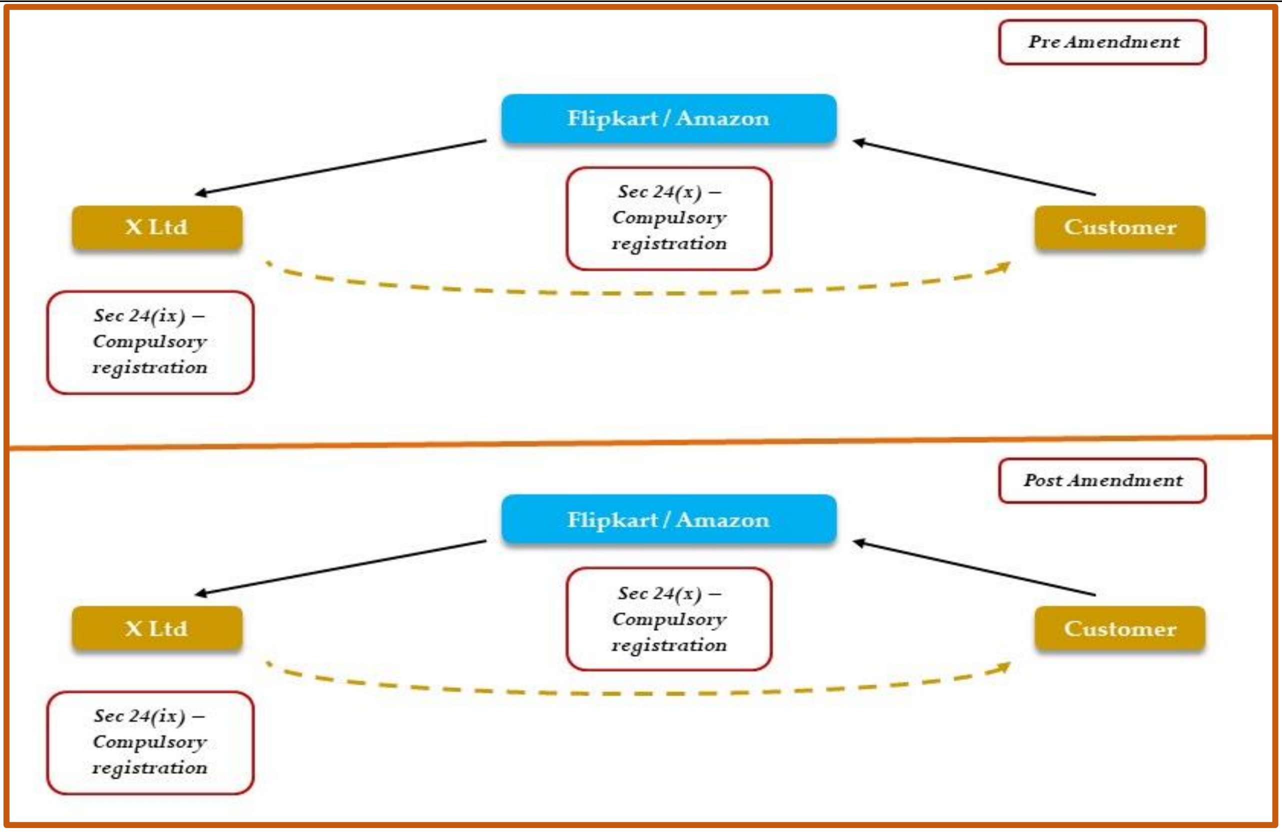
3) *Compulsory registration for e-commerce operator who is required to collect tax at source [Section 24(x) of CGST Act]*

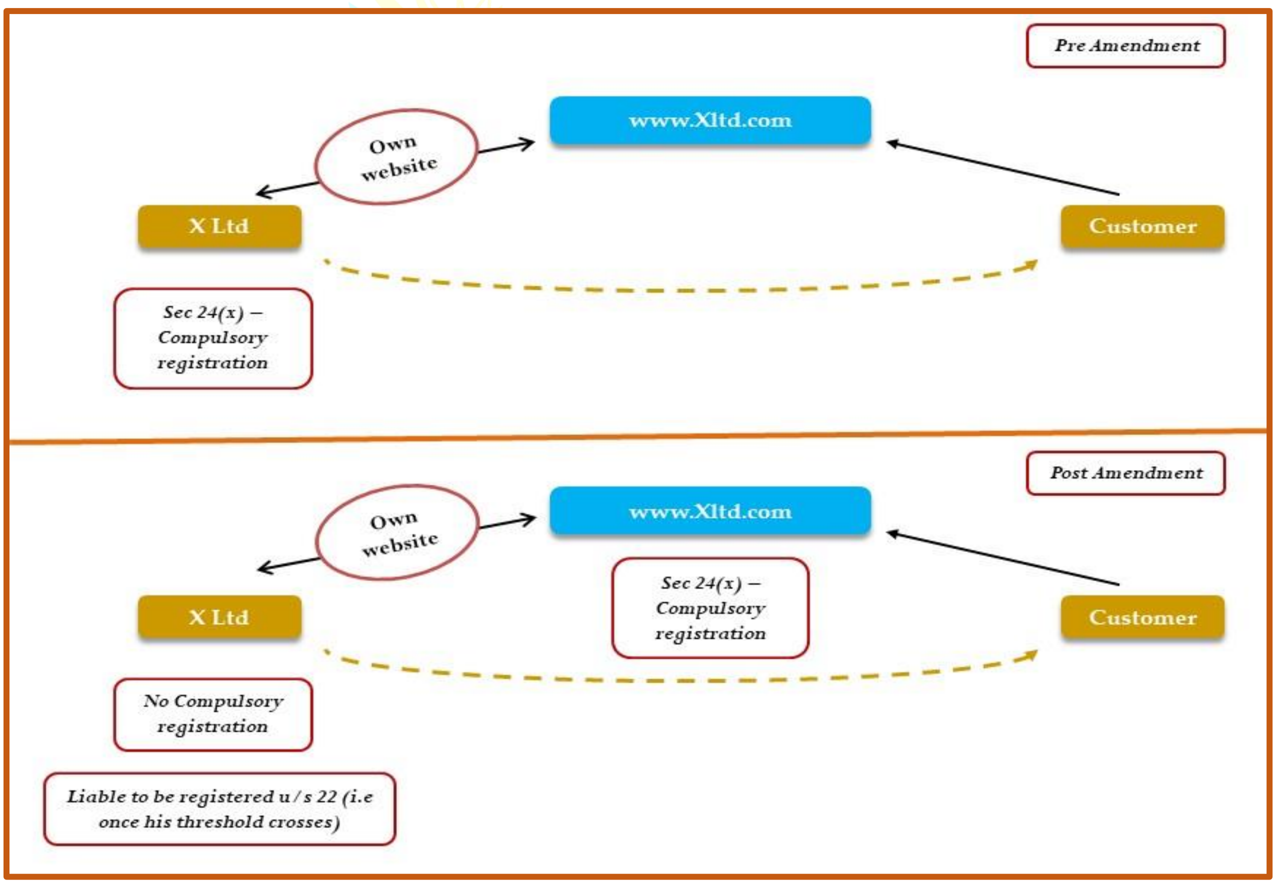
Section 24 of the CGST Act enlists the categories of persons who are compulsorily required to obtain registration

Pre – amendment	Post - amendment
⦿ Sec 24(iv) - Persons who are required to pay tax under Sec 9(5);	⦿ Same as before
⦿ Sec 24(ix) - Persons who supply goods or services or both, other than supplies specified under Sec 9(5), through such electronic commerce operator who is required to collect tax at source u/s 52;	⦿ Same as before
⦿ Sec 24(x) - Every electronic commerce operator	⦿ Every electronic commerce operator who is required to collect tax at source u/s 52

Registration Requirement for Small E Commerce Operators relaxed

This is a taxpayer-friendly measure. Small e-commerce operators who are not required to collect tax at source u/s 52 would now be eligible for availing the threshold exemption limit benefit for registration purposes.
Thus, Registration compliance burden for e-commerce operators, providing mere digital platform but not involved in payment aspect is sought to be reduced.
Thus, now only e-commerce operators who are required to collect tax at source u/s 52 of the CGST Act, 2017 are mandatorily required obtain GST registration.


Pre Amendment
Flipkart / Amazon
X Ltd
Sec 24(x) – Compulsory registration
Customer
Sec 24(ix) – Compulsory registration
Post Amendment
Flipkart / Amazon
X Ltd
Sec 24(x) – Compulsory registration
Customer
Sec 24(ix) – Compulsory registration


Pre Amendment
Own website
www.Xltd.com
X Ltd
Customer
Sec 24(x) – Compulsory registration
Post Amendment
Own website
www.Xltd.com
Sec 24(x) – Compulsory registration
X Ltd
Customer
No Compulsory registration
Liable to be registered u / s 22 (i.e once his threshold crosses)

4) *Separate registration for a person having multiple place of business in a State*

A person seeking registration under this Act shall be granted a single registration in a State or Union territory.

Pre – amendment	Post - amendment
⦿ Provided that a person having multiple business verticals in a State or Union territory … may be granted a separate registration for each business vertical, … subject to such conditions as may be prescribed	⦿ Provided that a person having MULTIPLE PLACES OF BUSINESS in a State or UT … may be granted a separate registration for each such place of business, … subject to such conditions as may be prescribed

- *The concept of "business vertical" under the GST regime has been omitted and substituted with the word "Place of business".*
- *The reason behind such a change can be traced back to the language used in the section 25(2). U/s 25(2,) a person shall be granted only a single registration in same State or Union Territory, except in case of business verticals.*
- *The business vertical as a term has a very limited ambit.*
- *The persons having one business vertical but multiple locations of business in a State or a Union Territory were devoid of this option of multiple registration.*
- *The amendment brings in a clarity in this regard by omitting the term "business vertical" and substituting it with "place of business", therefore, widening the scope of multiple registrations within a State or Union Territory.*

Impact of the amendment - Now, a person is now allowed to register multiple places of business, irrespective of indistinguishable nature of business, within the same state or union territory.

Example: Meethalal & Sons - a supplier in Delhi has three branches – two engaged in supply of garments and one engaged in supply of shoes. While as per the erstwhile provisions, Meethalal & Sons could obtain only registrations – one for business vertical of garments and another for business vertical of shoes, now it can obtain separate GST registration for each three branches.

Note - If separate registrations are obtained for each place of business then each place of business shall be treated as a separate entity and any transaction between these entities will be taxable. It is pertinent to mention that places of business beyond the State or UT need to be compulsorily registered.

- Consequently, the definition of 'business vertical' as contained in section 2(18) of the CGST Act has also been omitted. Another consequential amendment has also been carried out in clause (iii) of Explanation 1 of section 8(2) of the IGST Act by omitting the reference of business vertical in the same.

Impact of change

Sr. No.	*Situations/Examples*	*Before the amendment, i.e., "Business Verticals"*	*After the amendment, i.e., "Place of business"*
1	A company is engaged in selling desktops as well as mobile phones but from two different shops.	Company has an option to take two separate registrations for sale of desktops and mobile phones respectively **based on the business verticals**.	Company has an option to take two separate registrations for sale of desktops and mobile phones respectively **based on the place of business.**
2	A company has five manufacturing units (different place of business) of same items in a state.	Company has no option to take multiple registrations **as there are no separate business verticals.**	Company can get all five places separately registered as all the five manufacturing units **are five different places of businesses.**
3	A person is engaged in selling desktops as well as mobile phones from the same shop.	Person has an option to take two separate registrations **because there are two business verticals**.	Person **has a single place of business**, therefore, no option for two separate registrations arises.

Situation	*Pre – amendment*	*Post - amendment*
Unit 1 in Maharashtra – Supplying product X *Unit 2 in Gujarat – Supplying product Y*	*2 Separate registration required*	*2 Separate registration required*
Unit 1 in Maharashtra – Supplying product X *Unit 2 in Gujarat – Supplying product X*	*2 Separate registration required*	*2 Separate registration required*
Unit 1 in Maharashtra – Supplying product X *Unit 2 in Maharashtra – Supplying product Y*	*Separate Registration not required* *- Optionally, separate registration may be taken*	*Separate Registration not required* *- Optionally, separate registration may be taken*
Unit 1 in Maharashtra – Supplying product X *Unit 2 in Maharashtra – Supplying product X*	*Separate Registration cannot be taken [Mandatory single registration]*	*Separate Registration not required* *- Optionally, separate registration may be taken*

<u>Rule 11 : Separate registration for multiple place of businesses within a State or a Union territory</u> *Substituted vide N/N 03/2019-CT w.e.f 01.02.2019*	
(1)	*<u>Conditions for grant of separate registration of a place of business in a State/ UT</u>* *Any person having multiple places of business within a State or a UT, requiring a separate registration for any such place of business u/s 25(2) shall be granted separate registration in respect of each such place of businesses subject to the following conditions:* *a) Such person has more than one place of business as defined in Sec 2(85);*

	b) Such person shall not pay tax u/s 10 (composition scheme) for any of his places of business if he is paying tax u/s 9 for any other place of business; Ineligibility to composition scheme would extend to all registered places Explanation. - For the purposes of clause (b), it is hereby clarified that … where any place of business of a registered person that has been granted a separate registration becomes ineligible to pay tax u/s 10, all other registered places of business of the said person shall become ineligible to pay tax under the said section. c) All separately registered places of business of such person shall pay GST on supply of goods or services or both made to another registered place of businesses of such person and issue a tax invoice or bill of supply, as the case may be, for such supply.
(2)	A registered person opting to obtain separate registration for a place of businesses shall submit a separate application in FORM GST REG-01 in respect of each such place of business.
(3)	The provisions of rule 9 and rule 10 relating to verification and grant of registration shall, mutatis mutandis, apply to an application submitted under this rule.

5) Separate registration for SEZ unit or SEZ developer

- Earlier, first proviso to rule 8(1) of the CGST Rules provided that a person having unit in SEZ or an SEZ developer will make a separate application for registration as a business vertical distinct from his other units located outside SEZ.
- Thus, in case where two units of a taxpayer were located in same State - one in SEZ and another outside SEZ, separate registrations were required to be obtained for each of the two units as separate business vertical.
- With the dispensation of the requirement of having multiple business verticals to obtain separate registrations in a State/UT, the aforesaid provision has been accordingly modified with effect from 01.02.2019.
- Modified provision states that a person having a unit in SEZ or being a SEZ developer shall have to apply for a separate registration, as distinct from his place of business located outside the SEZ in the same State or Union territory.
- This modified provision has been incorporated as second proviso to section 25(1) and simultaneously, first proviso to rule 8(1) has been omitted

Provided further that
… a person
- having a unit, as defined in the SEZ Act, 2005, in a Special Economic Zone or
- being a Special Economic Zone Developer

… shall have to apply for a separate registration, as distinct from his place of business located outside the SEZ in the same State or Union Territory

[Separate registration for SEZ and Non-SEZ units]

__Illustration : [ICAI Study Material]__

Suvarna Industries is engaged in manufacturing activities in Uttar Pradesh.
It has two manufacturing units in UP - one in SEZ and another outside SEZ.
Under GST, separate registration of multiple units within state is not mandatory.

- *However, since in this case, one of the two units of Suvarna Industries is located in SEZ, its separate registration is mandatory.*
- *SEZ units have to be registered separately. Non-SEZ units have to be registered separately.*

6) __*Cancellation or suspension of registration [Section 29 of CGST Act and rule 21A of the CGST Rules]*__

Cancellation of registration – who initiates	**U/s 29, the cancellation of the registration can either be initiated by -** • **the Department on their own motion or** • **the registered person can apply for cancellation of their registration.**
Suspension of registration *[New Proviso inserted]*	**A proviso to section 29(1) has been inserted to provide that once** • **a registered person has applied for cancellation of registration or** • **the proper officer seeks to cancel his registration,** **… the proper officer may SUSPEND his registration during pendency of the proceedings relating to cancellation of registration filed by such registered person,** **… for such period and in such manner as may be prescribed.**
	The intent of the said amendment is to ensure that a taxpayer is freed from the routine compliances, including filing returns, under GST law during the pendency of the proceedings related to cancellation of registration.

- **Consequently, heading of the section has also been changed to 'Cancellation or suspension of registration'.**

Section 29 – CANCELLATION / SUSPENSION of Registration

1) The proper officer may,
   - either on his own motion or
   - on an application filed by the registered person or by his legal heirs, in case of death of such person,
   - cancel the registration, in such manner and within such period as may be prescribed,
   - having regard to the circumstances where,—
     a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
     b) there is any change in the constitution of the business; or
     c) the taxable person [other than the person voluntarily registered, is no longer liable to be registered u/s 22 or section 24.

Provided that
- *during pendency* of the proceedings relating to cancellation of registration filed by the registered person,
- the registration MAY be suspended
- for such period and in such manner as may be prescribed [Rule 21A]

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 thereunder as may be prescribed; or
   b) a person paying tax u/s 10 has not furnished returns for 3 consecutive tax periods; or
   c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of 6 months; or
   d) any person who has taken voluntary registration u/s 25(3) has not commenced business within 6 months from the date of registration; or
   e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

Provided further that
- during pendency of the proceedings relating to cancellation of registration,
- the proper officer may suspend the registration
- for such period and in such manner as may be prescribed [Rule 21A]

- *It was proposed to provide that once a registered person has applied for cancellation of registration, the proper officer may temporarily suspend its registration till the procedural formalities for cancellation are completed.*
- *This measure would relieve the taxpayer of continued compliance burden under the law till such time as the process of allowing cancellation of registration is completed as there is a time gap between applying for a time gap and cancellation of registration. Amendment has done away the requirement of compliance during this intervening period.*
- *The insertion of this proviso seeks to ensure that once it is sought to cancel the registration of a registered person, the proper officer may temporarily suspend the registration till the procedural formalities for cancellation are completed.*

Rule 21A - Period and manner of suspension of registration	[Notification No. 03/2019 CT dated 29.01.2019]
Where registered person has applied for cancellation of registration	**Where a registered person has applied for cancellation of registration,** **➔ the registration shall be deemed to be suspended from:** **a) the date of submission of the application** **or** **b) the date from which the cancellation is sought,** **whichever is later,** **… pending the completion of proceedings for cancellation of registration.**
Where cancellation of the registration has been initiated by the Department on their own motion:	**Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled,** **… he may, after affording the said person a reasonable opportunity of being heard,** **… suspend the registration of such person with effect from a date to be determined by him,** **… pending the completion of the proceedings for cancellation of registration.**
No taxable supply and no return required during period of suspension	**A registered person, whose registration has been suspended as above:** **• shall not make any taxable supply during the period of suspension and** **• shall not be required to furnish any return u/s 39.**
Suspension stands revoked from its initial date, on completion of proceedings of cancellation as per Rule 22	**The suspension of registration under sub-rule (1) or sub-rule (2) shall be** **… deemed to be revoked upon completion of the proceedings by the proper officer under rule 22** **… and such revocation shall be effective from the date on which the suspension had come into effect.**

Significant Notifications/ Circulars/ Orders

1) *Pending returns to be filed before revocation of cancellation of registration [Rule 23 of the CGST Rules]*

Rule 23 of the CGST Rules provides the procedure for revocation of cancellation of registration. First proviso to section 23(1) provided that if the registration has been cancelled on account of failure of the registered person to furnish returns, no application for revocation of cancellation of registration shall be filed, unless such returns are furnished and any amount in terms of such returns is paid.

Rule 23 : Revocation of cancellation of registration
(1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within thirty days from the date of service of the order of cancellation of registration at the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner: NON-RETURN FILER can apply only filing of returns and payment of tax & other dues Provided that no application for revocation shall be filed if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns has been paid along with any amount payable towards interest, penalty and late fee payable in respect of the said returns.
2 new provisos inserted
Revocation of Cancellation Order: Obligation to file return (a) Cancellation order passed with prospective effect: Such cancellation now revoked Provided further that … all returns due for the period ⇒ from the date of the order of cancellation of registration ⇒ till the date of the order of revocation of cancellation of registration … shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration (b) Cancellation order passed with retro-prospective effect: Such cancellation now revoked Provided also that … where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period ⇒ from the effective date of cancellation of registration ⇒ till the date of the order of revocation of cancellation of registration … within a period of thirty days from the date of order of revocation of cancellation of registration

From the combined reading of aforesaid provisions, it can be inferred that where the registration has been cancelled with effect from the date of order of cancellation of registration,

(i) all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed and

(ii) all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of 30 days from the date of the order of revocation.

However, where the registration has been cancelled with retrospective effect, the application for revocation of cancellation of registration can be filed, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of 30 days from the date of order of such revocation of cancellation of registration.

Return not furnished from	Date of order of cancellation of registration	Cancellation of registration effective from	Date of filing of application for revocation of cancellation of registration as per RoD (to be filed on or before the 22nd July, 2019)	Returns to be furnished before filing the application for revocation of cancellation of registration	Date of order of revocation of cancellation of registration	Date of furnishing returns for period b/w date of order of cancellation of registration and date of revocation of cancellation of registration (to be filed within 30 days from the date of order of revocation of cancellation of registration)	Returns to be furnished within 30 days from date of order of revocation of cancellation of registration
July, 18 [July, 18 being first tax period for which return was not filed]	**01st March, 19**	01st March, 19 *(prospective cancellation)*	30th May, 19	**Returns due till 01st March, 19** (i.e. July, 18 to January, 19)	**01st June, 19**	01st July, 19	**Returns due till 01st June,19** (i.e. February, 19 to April, 19)
July, 18 [July, 18 being first tax period for which return was not filed]	**22nd March, 19**	22nd March, 19 *(prospective cancellation)*	20th June, 19	**Returns due till 22nd March, 19** (i.e. July, 18 to February, 19)	**22nd June,19**	22nd July, 19	**Returns due till 21st June, 19** (i.e. March, 19 to May, 19)
July, 18 [July, 18 being first tax period for which return was not filed]	**01st March, 19**	01st July, 18 *(retrospective cancellation)*	30th May, 19	**N.A.** *(Common portal does not allow filing of return in case of retrospective cancellation)*	**01st June,19**	01st July, 19	**Returns due till 01st June, 19** (i.e. July, 18 to April, 19)

2) ***Clarification that transfer/ change in ownership of business to include the transfer/change in ownership due to the death of sole proprietor***

Section 18 : Availability of credit in SPECIAL CIRCUMSTANCES
Change in constitution of REGISTERED PERSON (merger/ de-merger etc)
(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities,
➔ ***the said registered person shall be allowed to transfer the ITC which remains unutilised in his electronic credit ledger***
to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed*. [Rule 41 of CGST Rules]

Issue: Whether section 18(3) of the CGST Act provides for transfer of ITC which remains unutilized to the transferee in case of death of the sole proprietor?
Clarification: For the purpose of section 18(3) of the CGST Act and rule 41(1) of the CGST Rules and Section 22(3),
- ➔ ***transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.***

[Circular No. 96/15/2019 GST dated 28.03.2019]

- ✪ ***In case of transfer of business with the specific provisions for transfer of liabilities, unutilized ITC can be transferred to the transferred business in terms of section 18(3) of the CGST Act.***
- ✪ ***Rule 41(1) of the CGST Rules requires the registered person to furnish the details of transfer of business in the prescribed form electronically on the common portal along with a request for transfer of unutilized ITC lying in his electronic credit ledger to the transferee.***

Illustration: Mr. A is a GST registered person. He died due to sudden heart attack. His only son, Mr. C, is succeeded into this business.
- ⦿ ***Mr. C is liable to be registered with effect from the date of such succession without considering the threshold turnover limit.***

Section 22 : Persons liable for registration.
(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern,
… the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

Death of sole proprietor - If the business is continued by any person being transferee or successor

Registration liability of the transferee / successor:	Sec 22(3)	Mandatorily liable to be registered with effect from the date of such transfer or succession	File FORM GST REG-01 *[mention the reason to obtain registration as "death of the proprietor"]*
Cancellation of registration on account of death of the proprietor	Sec 29(1)	Allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration	File application for cancellation of registration in FORM GST REG-16 *[mention reason as "death of sole proprietor" and also mention GSTIN of transferee to whom the business has been transferred]*
Transfer of input tax credit and liability	Sec 18(3) + Rule 41	Allows the registered person to transfer the unutilized ITC lying in his electronic credit ledger to the transferee	Transferee / successor shall file FORM GST ITC-02 in respect of the registration which is required to be cancelled on account of death of the sole proprietor <u>before filing the application for cancellation of such registration</u> *[Upon acceptance by the transferee / successor, the unutilized ITC specified in FORM GST ITC-02 shall be credited to his electronic credit ledger]*

Chapter : Composition Scheme

Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019 unless otherwise specified

Amendments in Composition Scheme

1) ***Tax payable under composition scheme is payable in lieu of tax payable u/s 9(1) [Section 10 of the CGST Act]***

Section 10(1) has been amended in following manner with a view to remove any interpretational ambiguity and stipulate that the composition tax payers shall pay tax as a percentage of their turnover instead of the tax payable on the invoice value of the transactions u/s 9(1) [applicable to regular taxpayers].

1) ***Optional Composition Scheme: Eligible Supplier (FCM liability) = RP with ATO within specified limit + Compliance with Rule 5***

- **Notwithstanding anything to the contrary contained in this Act**
- **but subject to the provisions of section 9(3) and 9(4),**
- **a REGISTERED person, whose AGGREGATE TURNOVER in the preceding financial year did not exceed Rs 50 lakhs,**
- **may OPT TO pay, in lieu of the tax payable by him u/s 9(1),**
- **an amount of tax calculated at such rate as may be prescribed (Rule 7 of CGST Rules), but not exceeding -**

In case of	Rate
Manufacturer	0.5% of the turnover in State or turnover in Union territory
Persons engaged in making supplies referred to in Schedule II – 6 (b) [i.e Restaurant and Caterer services]	2.5% of the turnover in State or turnover in Union territory
Other suppliers [i.e Traders]	0.5%* of the turnover in State or turnover in Union territory

- **subject to such conditions and restrictions as may be prescribed *(Rule 5 of CGST Rules)***

Provided that the Government may, by notification, increase the said limit of Rs 50 Lakhs to such higher amount, not exceeding Rs 1.5 Crore as may be recommended by the Council.

The CGST Amendment Act, 2018: [Clarificatory amendments]

- *Amount payable under composition scheme is also 'tax' – it is in lieu of tax payable u/Sec 9(1) of CGST Act*

- *Composition Scheme is only in respect of 'outward supply' subject to FCM liability.*
- *In case of reverse charge falling u/s 9(3) or 9(4), benefit of this section cannot be availed.*
- *RCM-tax would be payable in addition to composition tax.*
- *Composition tax merely replaces normal GST payable u/s 9(1) of CGST Act and corresponding provision under SGST.*
- *RCM liability, if any, shall be discharged as per normal GST rates*

2) *Turnover limit for determining the eligibility for composition scheme enhanced to Rs. 1.5 crore*

⇒ Earlier, the Government had the power to increase the turnover limit for determining the eligibility for composition scheme (hereinafter referred to as eligibility turnover limit) upto Rs. 1 crore [First proviso to section 10 of CGST Act].

⇒ The said provision has been amended thereby empowering the Government to enhance the eligibility turnover limit for composition scheme upto Rs. 1.5 crore.

⇒ Consequently, in pursuance of aforesaid power, with effect from 1st April, 2019, the eligibility turnover limit for composition scheme is enhanced from Rs. 1 crore to Rs. 1.5 crore. N/N 14/2019 CT has been issued.

Notification No. 14/2019 CT dated 07.03.2019

- **Prescribed limit - Rs 1.5 Crore,**

However, for 8 SCS (Special Category States)- Eligibility limit shall be 75 Lakhs

For following States – Prescribed limit – Rs 75 Lakhs

(i) Arunachal Pradesh,
(ii) Manipur,
(iii) Meghalaya,
(iv) Mizoram,
(v) Nagaland,
(vi) Sikkim,
(vii) Tripura,
(viii) Uttarakhand

It is notable that Assam, Himachal Pradesh and J&K does not figure for lower limit.

∴ Eligibility turnover limit of these 3 states is Rs 1.5 crore.

Ineligible manufacturers

Provided further that the registered person shall not be eligible to opt for composition levy u/s 10(1) of the said Act if such person is a manufacturer of following goods –

a) **Ice cream and other edible ice, whether or not containing cocoa**
b) **Pan Masala**
c) **Tobacco and Manufactured tobacco substitutes**

Sec 172- Removal of Difficulty (RoD) Order: It has enhanced limit of '1 crore' to '1.5 Crore'.

Determination of Eligibility Limit of ATO: Exempt service – Interest shall be excludible

CGST (Removal of Difficulty) Order, 2019 - w.e.f. 1-2-2019

Exempted Interest/Discount shall not be included in 'aggregate turnover' for eligibility :

The value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account in computing aggregate turnover in order to determine the eligibility for composition scheme.

Crux: *ATO (as defined in Sec 2(6) includes even exempt supply. However, it has been provided that exempted interest / discount (exempt services) shall be excluded from ATO for the purpose of determination of eligibility for composition scheme.*

Illustration: XYZ Ltd., a dealer in stationary, had effected intra-state supply of Rs. 140,00,000 and had provided some exempt services of Rs. 5 lakh and had also earned interest income of Rs. 7 lakh during preceding financial year. Determine whether it is eligible for composition scheme in the current year.

Solution : ATO (Sec 2(6) of CGST Act read with CGST (Removal of Difficulty Order), 2019) = 140 + 5 = Rs. 145 lakhs. Since ATO in PY is upto Rs. 150 lakhs, hence, it is eligible for composition scheme

*** Prior to CGST Amendment Act, 2018, Removal of Difficulty Order was (Order No. 01/2019-CT) – which has now been omitted.*

3) ***Composition scheme taxpayers permitted to render services other than restaurant services upto a specified limit [Second proviso to section 10 of the CGST Act]***

Pre – amendment	Post - amendment
⦿ Under the erstwhile provisions, only a supplier of restaurant service was eligible for composition scheme. ⦿ A person engaged in the supply of any service other than restaurant service was not eligible for composition scheme	⦿ A registered person opting for composition scheme to supply services [other than restaurant services] of specified value. ⦿ This specified value is value not exceeding higher of following 2: (a) 10% of the turnover in a State/Union territory in the preceding financial year; or (b) Rs. 5 lakh, whichever is higher. *[Second proviso to Sec 10(1) has been inserted]*

Reason - There were cases where a manufacturer/ trader is also engaged in supply of services other than restaurant service though the percentage of such supply of services is very small as compared to the supplies of goods. There were also some cases where a restaurant service provider is also engaged in supplying a small percentage of other services.

- *Thus, it can be inferred that a registered person opting for composition scheme whose turnover is upto Rs 50 lakh in the preceding financial year can supply services [other than restaurant services] upto a maximum value of Rs 5 lakh in the current financial year.*
- *Further, a registered person opting for composition scheme whose turnover is more than Rs 50 lakh and upto Rs1.5 crore in the preceding financial year can supply services [other than restaurant services] in the current*

financial year upto a maximum value of 10% of the turnover in a State/Union territory in the preceding financial year.

Pre – amendment	Post - amendment
Section 10(2)(a) - ⦿ The registered person shall be eligible to opt under sub-section (1), if–– a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II [i.e restaurant service / catering service];	⦿ The registered person shall be eligible to opt under sub-section (1), if— a) Save as otherwise provided in sub-section (1), he is not engaged in the supply of SERVICES.
Consequently, eligibility to opt for composition scheme as contained in section 10(2)(a) has also been amended to provide that the registered person shall be eligible to opt for the composition scheme provided: *(i) either he is not at all engaged in supply of services other than restaurant services* *or* *(ii) in case he supplies services other than restaurant services, value of such services does not exceed 10% of the turnover in a State/Union Territory in the preceding financial year or Rs 5 lakh, whichever is higher.*	

Example:
Ramsewak has opted for composition scheme in the financial year 2019-2020.
His aggregate turnover in FY 2018-19 is Rs 60 lakh.

In FY 2019-2020, he can supply services [other than restaurant services] upto a value of not exceeding:
(a) 10% of Rs 60 lakh, i.e. Rs 6 lakh or
(b) Rs 5 lakh, whichever is higher.
Thus, he can supply services upto a value of Rs 6 lakh in FY 2019-2020.

DIFFICULY FACED BY SUPPLIERS WHO WISH TO OPT FOR COMPOSITION SCHEME

Interest income to be excluded while computing aggregate turnover for determining eligibility for composition scheme. Interest income not to render a person ineligible for composition scheme

Order No. 01/2019 CT dated 01.02.2019

Said order clarifies that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account -

1) **for determining the eligibility for composition scheme under second proviso to section 10(1).**
   - ⦿ **Under this proviso, a registered person opting for composition scheme may supply services [other than restaurant services] of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or Rs 5 lakh, whichever is higher.**
   - ⦿ **Thus, while computing value of services [other than restaurant services] as referred in second proviso to section 10(1), interest on loans/deposit/advances will not be taken into account.**

2) **in computing aggregate turnover in order to determine eligibility for composition scheme.**

4) ***Rates under composition scheme***

⇒ Under composition scheme, a (i) manufacturer, (ii) restaurant service provider and (iii) any other supplier eligible for composition levy, is required to pay tax @ (i) 1%, (ii) 5% and (iii) 1% respectively.

⇒ Pre-Amendment: Earlier, tax rate under category (iii) was ½% of turnover of taxable supplies of goods in the State or Union territory.

⇒ Post-Amendment: However, as discussed above, since now a supplier opting for composition scheme has also been permitted to supply services other than restaurant services marginally, with effect from 1st Feb, 2019, tax rate under category (iii) is 1% of turnover of taxable supplies of goods and services in the State or Union territory.

Rule 7 - Rate of tax for composition levy (as presently applicable)

	Eligible Registered person	CGST Rate (as prescribed)	Total Liability
1	Manufacturer Supplier of goods (other than supplier of certain notified goods)	0.5% of the TO in the State/ UT	1% of TO in the State / UT
2	Suppliers making supplies referred to in Schedule II – Para 6(b), i.e., Caterers (restaurant as well as outdoor caterer)	2.5% of the TO in the State/ UT	5% of TO in the State / UT
3	Any Other Supplier (basically, traders of goods, Supplier of services other than restaurant and catering)	0.5% of the TO of taxable supplies of goods and services in the State/ UT	1% of TO of taxable supplies (goods/services) in the State / UT

5) ***Interest income to be excluded while computing aggregate turnover for determining eligibility for composition scheme. Interest income not to render a person ineligible for composition scheme***

DIFFICULY FACED BY SUPPLIERS WHO WISH TO OPT FOR COMPOSITION SCHEME

Interest income to be excluded while computing aggregate turnover for determining eligibility for composition scheme. Interest income not to render a person ineligible for composition scheme

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Said order clarifies that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account -

1) for determining the eligibility for composition scheme under second proviso to section 10(1).
   - Under this proviso, a registered person opting for composition scheme may supply services [other than restaurant services] of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or Rs 5 lakh, whichever is higher.
   - Thus, while computing value of services [other than restaurant services] as referred in second proviso to section 10(1), interest on loans/deposit/advances will not be taken into account.

2) in computing aggregate turnover in order to determine eligibility for composition scheme.

6) *Effective date in case of denial of composition option by tax authorities*

Circular No. 77/51/2018 GST dated 31.12.2018.

⇒ In case of denial of option to pay tax under composition levy by the tax authorities, it has been clarified that the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities.

⇒ However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules

Significant Notifications/ Circulars/ Orders

1) *NEW COMPOSITION SCHEME offered through Notification – N/N 02/2019-CT (Rate)*

COMPOSITION SCHEME FOR SERVICE PROVIDERS [PRESUMPTIVE LEVY]

Notification No. 2/2019-Central Tax (Rate) –7th March, 2019 *[w.e.f 1st April, 2019]*	
Option to pay concessional tax @ 6% (CGST 3% + SGST3%)	**With effect from 01.04.2019, Notification No. 2/2019 CT (R) dated 07.03.2019 has provided an option to** ⦿ **a registered person whose aggregate turnover in the preceding financial year is upto Rs 50 lakh** ⦿ **and who is not eligible to pay tax under composition scheme,** ⦿ **to pay tax @ 6% on first supplies of goods and/or services** ⦿ **upto an aggregate turnover of Rs 50 lakh made on/after 1st April in any FY,** ⦿ **subject to specified conditions.**
	Who are the persons not eligible for composition scheme, but eligible for Notification No. 2/2019 CT (R)? A registered person whose aggregate turnover in the preceding financial year does not exceed Rs 50 lakh and: • who is exclusively engaged in supplying services other than restaurant services, or • who is engaged in supply of services [other than restaurant services] alongwith supply of goods and/ or restaurant services of value exceeding Rs 5 lakh in current FY.
Conditions	**1) Supplies are made by a registered person who is:** • **not engaged in making any supply which is not leviable to tax under the said Act.** • **not engaged in making any inter-State outward supply – neither of goods nor of services.** • **neither a casual taxable person nor a non-resident taxable person.** • **not engaged in making any supply through an electronic commerce operator who is required to collect tax at source u/s 52.**

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- not engaged in making supplies of notified goods, namely, ice cream and other edible ice, whether or not containing cocoa [2105 00 00], Pan masala [2106 90 20] and all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes.

2) The registered person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

3) The registered person shall issue a BILL OF SUPPLY** instead of tax invoice. Such bill of supply will have the following words at its top –
'taxable person paying tax in terms of Notification No. 2/2019 CT (R) dated 07.03.2019, not eligible to collect tax on supplies'.
***Order No. 3/2019 CT dated 08.03.2019 has clarified that provisions of section 31(3)(c) of the CGST Act, 2017 [containing provisions relating to Bill of Supply] shall also apply to a person paying tax under this notification.*

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<td>Other significant points</td>
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1) Where more than one registered persons are having the same PAN, GST on supplies by all such registered persons is paid @ 6% under this notification.

2) The registered person opting to pay GST@ 6% under this notification shall be liable to pay:

<table>
<tr><td>GST @ 6% on all outward supplies</td><td>FIRST SUPPLIES of goods or services or both upto an aggregate turnover of Rs50 lakh made on or after the 1st April in any FY
[regardless of any exemption from tax available to such supplies or any notification issued u/s 9(1) or u/s 11]</td></tr>
<tr><td>GST on inward supplies</td><td>on which he is liable to pay tax u/s 9(3)/9(4) (reverse charge) at the applicable rates.</td></tr>
</table>

3) In computing aggregate turnover in order to determine eligibility of a registered person to pay GST @ 6% under this notification, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

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<tr>
<td>Opting for payment of tax under this presumptive scheme – Impact on ITC already taken</td>
<td>Where any registered person who has availed of ITC opts to pay tax under this notification,
… he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger,
… equivalent to the ITC in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods</td>
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<tr><td></td><td>… as if the supply made under this notification attracts the provisions of section 18(4) of the CGST Act
… and the rules made thereunder
… and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.</td></tr>
<tr><td>Procedure for availing benefit of this notification</td><td>The CGST Rules, 2017, as applicable to a person paying tax under section 10 of the said Act shall, mutatis mutandis (with necessary changes/modification), apply to a person paying tax under this notification.

<u>Circular No. 97/16/2019-GST dt. 5-4-2019</u>
Subject: Clarification regarding exercise of option to pay tax under notification No. 2/2019- CT(R)
(i) <u>Supplier already registered – opting for composition – file intimation by 30th April 2019 –</u>
<table><tr><td>File intimation in FORM GST CMP-02</td><td>selecting the category of registered person as “Any other supplier eligible for composition levy”</td><td>30th April, 2019</td></tr><tr><td>Furnish a statement of ITC in FORM GST ITC- 03.</td><td></td><td></td></tr></table>
(ii) <u>Supplier applying for fresh registration – opt for composition through the registration application –</u>
Indicate the option of availing in FORM GST REG-01 at the time of filing of application for registration.

(iii) <u>Option shall be exercised i.r.o. all premises –</u>
The option of payment of tax by availing the benefit of the said notification
… in respect of any place of business in any State or Union territory
… shall be deemed to be applicable in respect of all other places of business registered on the same PAN.

(iv) <u>Date of effectiveness of option [(i) Supplier already registered – option effective from 1st April, (ii) Supplier applying fresh registration – option effective from date of registration] –</u>
The option to pay tax by availing the benefit of the said notification would be effective from the beginning of the financial year or from the date of registration in cases where new registration has been obtained during the financial year.

It may be noted that the provisions contained in Chapter II of the said Rules shall mutatis mutandis apply to persons paying tax by availing the benefit of the said notification, except to the extent specified above.</td></tr>
<tr><td>First supplies of goods or services or both</td><td>First supplies of goods or services or both shall,
⦿ for the purposes of determining eligibility of a person to pay tax under this notification - INCLUDE the supplies from 1st April of a FY to the date from which he becomes liable for registration under the said Act</td></tr>
</table>

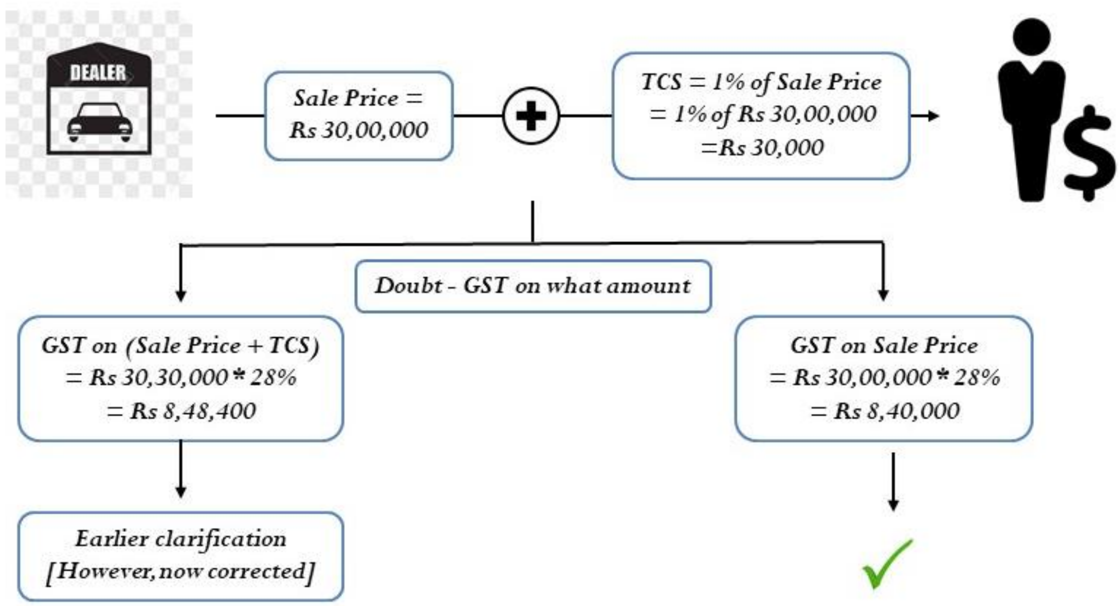
	⦿ **for the purpose of determination of tax payable under this notification – DO NOT INCLUDE the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.**

Chapter : Value of Supply

Significant Notifications/ Circulars/ Orders

1) *Clarification on valuation methodology for ascertainment of GST on TCS under Income Tax Act, 1961* *[Circular No. 76/50/2018 GST dated 31.12.2018 amended vide corrigendum dated 7.03.2019]*

Pre – amendment	Post - amendment
What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?	
It is clarified that, taxable value for the purposes of GST … shall include the TCS amount collected under the provisions of the Income Tax Act … since the value to be paid to the supplier by the buyer is inclusive of the said TCS.	For the purpose of determination of value of supply under GST, TCS under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.
Supplier making supply and collecting TCS (income tax) from buyer/receipient: Such TCS not be includible in value of supply	



2) *Clarification on discounts*

Circular No. 92/11/2019-GST - dated 7th march, 2019

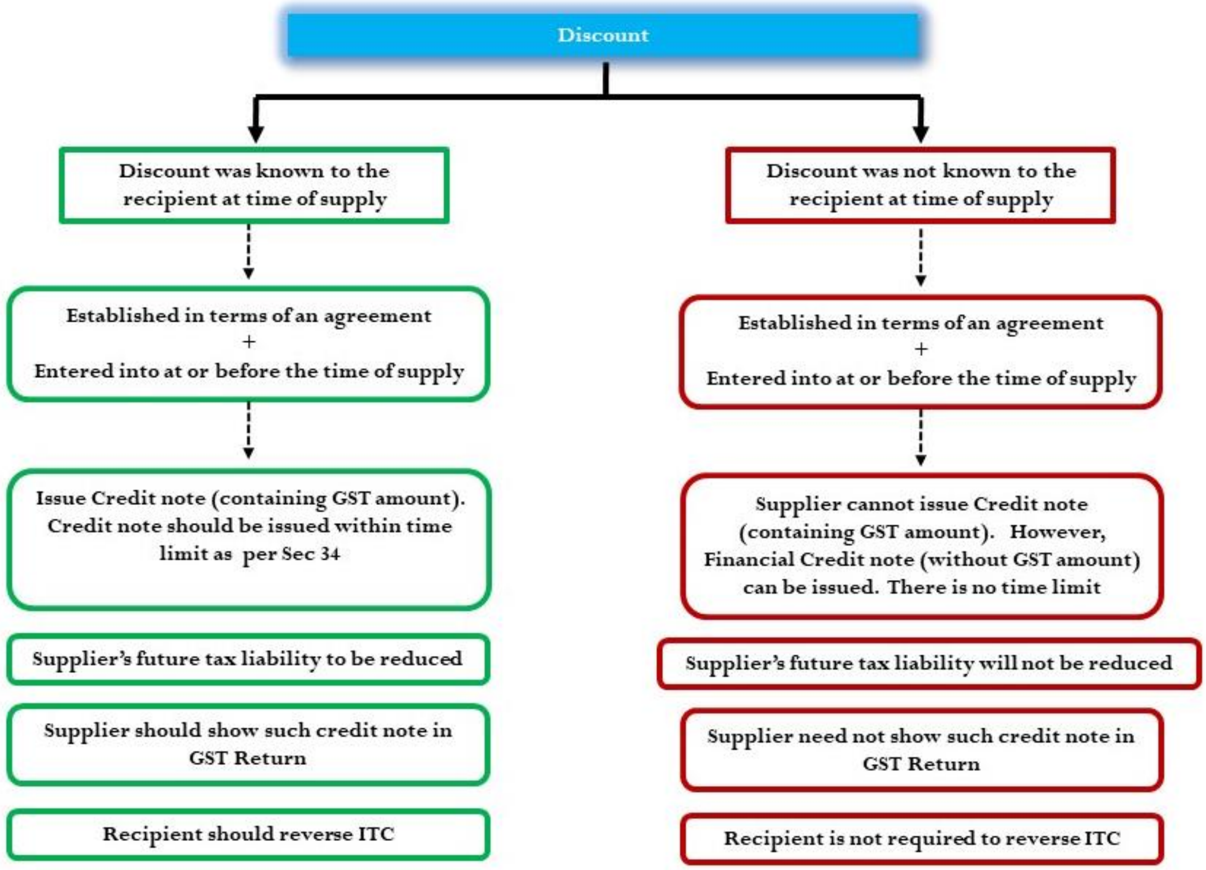
Clarification as to treatment of Discounts including 'Buy more, save more' offers ::
✪ Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). *For example- Get 10 % discount for purchases above Rs. 5000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-. Such discounts are shown on the invoice itself.* ✪ Some suppliers also offer periodic / year ending discounts to their stockists, etc. *For example- Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year.* ✪ Such discounts are … established in terms of an agreement … entered into at or before the time of supply … though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. ✪ In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.
It is clarified that discounts offered by the suppliers to customers (including staggered discount under "Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in section 15(3) of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

Clarification on Secondary Discounts (discounts not known at time of supply)::
✪ These are the discounts which are not known at the time of supply or are offered after the supply is already over. *For example, M/s A supplies 10,000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet.* ✪ The issue for consideration is that whether credit notes u/s 34(1) of the CGST Act can be issued in such cases even if the conditions laid down in section 15(3)(b) of the CGST Act are not satisfied.
It is hereby clarified that FINANCIAL / COMMERCIAL CREDIT NOTE can be issued by the supplier even if the conditions mentioned in section 15(3)(b) are not satisfied. ***In other words, credit note can be issued as a commercial transaction between the two contracting parties.***

It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in section 15(3)(b) are not satisfied

In other words, value of supply shall not include any discount by way of issuance of credit note as explained above or by any other means, except in cases where conditions mentioned in section 15(3)(b) are satisfied.

There is no impact on availability or otherwise of ITC in the hands of supplier in this case



Chapter : Tax Invoice, Credit and Debit Notes; E – Way Bill

Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

Amendment in Credit Notes and Debit Notes

1) *One or more credit / debit notes can be issued for multiple invoices [Sub-sections (1) and (3) of section 34 of the CGST Act]*

At present, a credit/debit note which is issued by the registered person is required to be issued invoice-wise. This causes avoidable compliance burden for tax payers. Thus, it is proposed to allow issuance of consolidated credit/debit which is in line with the best international practices.

Pre – amendment	Post - amendment
Where a tax invoice has been issued for supply of any goods or services or both and … the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or … where the goods supplied are returned by the recipient, or … where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a CREDIT NOTE for supplies made in a financial year containing such particulars as may be prescribed (Rule 53 of CGST Rules, 2017)	Where ONE OR MORE TAX INVOICES have been issued for supply of any goods or services or both … and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or … where the goods supplied are returned by the recipient, or … where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient ONE OR MORE CREDIT NOTES for supplies made in a financial year containing such particulars as may be prescribed (Rule 53 of CGST Rules, 2017)
Impact – *1) Flow of debit notes and credit notes with GST is a uni-directional flow from supplier. Credit Note or Debit Note with GST cannot be issued by recipient* *2) One Credit / Debit Note for multiple tax invoices and multiple credit / debit notes for one tax invoice is permissible* *3) Debit / Credit Note should be financial year-wise i.e. one credit / debit note cannot cover tax invoices in multiple financial years.* *4) Linking credit note / debit note with individual invoices is not required now [This would simplify the compliance procedure]*	

Pre – amendment	Post - amendment
Where a tax invoice has been issued for supply of any goods or services or both and … the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, … the registered person, who has supplied such goods or services or both, shall issue to the recipient a DEBIT NOTE for supplies made in a financial year containing such particulars as may be prescribed. (Rule 53 of CGST Rules, 2017) Explanation. For the purposes of this Act, the expression "debit note" shall include a supplementary invoice	Where ONE OR MORE TAX INVOICES have been issued for supply of any goods or services or both … and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, … the registered person, who has supplied such goods or services or both, shall issue to the recipient ONE OR MORE DEBIT NOTES for supplies made in a financial year containing such particulars as may be prescribe d. (Rule 53 of CGST Rules, 2017) Explanation. For the purposes of this Act, the expression "debit note" shall include a supplementary invoice

Impact –
1) *Flow of debit notes and credit notes with GST is a uni-directional flow from supplier. Credit Note or Debit Note with GST cannot be issued by recipient*
2) *One Credit/Debit Note for multiple tax invoices and multiple credit/debit notes for one tax invoice is permissible*
3) *Debit/Credit Note should be financial year-wise i.e. one credit/debit note cannot cover tax invoices in multiple financial years.*
4) *Linking credit note / debit note with individual invoices is not required now [This would simplify the compliance procedure]*

Significant Notifications/ Circulars/ Orders

1) ***Signature/ digital signature of the supplier/ his authorised representative not required on (i) electronic tax invoice, (ii) electronic bill of supply, (iii) electronic consolidated tax invoice in case of banking companies etc. and (iv) electronic ticket for passenger transportation service [Rules 46, 49 and 54 of the CGST Rules]***

Rule 46	Tax invoice	Should contain signature or digital signature of the supplier or his authorized representative. A proviso has been inserted in all the said rules to lay down that that such signature or digital signature of the supplier or his authorised representative would not be required in the case of an electronic invoice / electronic bill of supply / electronic consolidated invoice / electronic ticket
Rule 49	Bill of supply	
Rule 54(2)	Monthly consolidated tax invoice or any other document in lieu thereof, in case of insurance company/banking company / financial institutions including NBFCs	
Rule 54(4)	Ticket issued for passenger transportation service to be considered as a tax invoice	

Signature or digital signature of supplier/ authorised representative not required on following documents

- Electronic tax invoice
- Electronic bill of supply
- Electronic consolidated tax invoice in case of Insurance/Banking companies, financial isntitutions including NBFCs
- Electronic ticket issued for passenger transportation service

2) *New contents prescribed for credit and debit notes*

[Notification No. 03/2019 CT dated 29.01.2019]

⇒ **Prior to amendment, sub-rule (1) of rule 53 of the CGST Rules prescribed the contents of revised tax invoice as well as credit or debit notes.**

⇒ **A new sub-rule (1A) has been inserted in rule 53 to provide the contents of debit and credit notes separately. Consequently, sub-rule (1) now provides the contents of only the revised tax invoice.**

Rule 53 : REVISED tax invoice and credit or debit notes *[as amended]*

Particulars of 'revised tax invoice'

A **revised tax invoice** referred to in section 31 ~~**and credit or debit note referred to in section 34**~~

[Separate provisions made for debit/credit notes in sub-rule (1A)]

shall contain the following particulars -

a) **the word "Revised Invoice",** wherever applicable**, indicated prominently;**
b) name, address and **GSTIN of the supplier;**
c) ~~**nature of the document**;~~ *[omitted w.e.f. 1-2-2019]*
d) a consecutive **serial number not exceeding sixteen characters**,
… in one or multiple series,
… containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof,
… unique for a financial year;
e) **date of issue** of the document;
f) **name, address** and **GSTIN or UIN, if registered, of the recipient**;
g) name and address of the recipient **and** the address of delivery, along with the name of State and its code**, if such recipient is un-registered;**
h) **serial number** and **date of the corresponding** tax invoice or, as the case may be, bill of supply;
i) ~~**value of taxable supply of goods or services, rate of tax** and the amount of the tax credited or, as the case may be, debited to the recipient~~; *[omitted w.e.f. 1-2-2019]* and
j) **signature or digital signature** of the supplier or his authorized representative:

Rule 53 : REVISED tax invoice and credit or debit notes *[as amended]*
<u>Particulars of 'Debit / Credit Note' [Rule 53(1A)]</u> A credit or debit note referred to in section 34 shall contain the following particulars - (a) name, address and GSTIN of the supplier; (b) nature of the document; (debit note / Credit note) (c) a consecutive serial number not exceeding sixteen characters, … in one or multiple series, … containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, … unique for a financial year; (d) date of issue of the document; (e) name, address and GSTIN or UIN, if registered, of the recipient; (f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered; (g) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply; (linking it with debit note / Credit note) (h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and (i) signature or digital signature of the supplier or his authorized representative:

Chapter : Input Tax Credit

Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

Amendment in ITC - Availment

1) ***Provisions introduced for availing ITC in case of bill to ship to situations in case of services [Explanation to section 16(2)(b) of the CGST Act]***

Sec 16(2) – **CONDITIONS FOR TAKING CREDIT**

Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

Tax paying document [Section 16(2)(a) & Rule 36]

a) He is in possession of -
- **A tax invoice or debit note** issued by a supplier registered under this Act, or
- Such **other tax paying documents** as may be prescribed *(Rule 36 of CGST Rules)*;

b) He has **received the goods or services** or both.

Explanation — For the purposes of this clause, it shall be deemed that

… the registered person has received the goods or, as the case may be, **SERVICES** —

(i) where the goods are delivered
- by the supplier
- to a recipient or any other person
- on the direction of such registered person, whether acting as an agent or otherwise
- before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided
- **by the supplier**
- **to any person**
- **on the direction of and on account of such registered person.**

- *Section 16(2) of CGST Act deals with the conditions for availing input tax credit. One such condition is that the goods or services or both shall be received by the registered person.*

- *In the case of "bill-to-ship-to" situations, for the purposes of availing of ITC on goods by the registered person, a deeming provision is present as an explanation to section 16(2)(b) of the CGST Act vide which the registered person is deemed to have received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of the said registered person.*
- *The CGST (Amendment) Act, 2018 has amended the said explanation to introduce such deeming fiction in case of services as well.*

2) ***For the purpose of reversal of ITC, value of exempt supplies not to include Schedule III items except sale of land and sale of building [Section 17(3) of the CGST Act]***

⇒ As per section 17(2) of the CGST Act, where goods and/or services are partly used for making exempt supplies including zero rated supplies and partly for taxable supplies,

➔ ITC attributable to only taxable supplies and zero rated supplies can be taken by the registered person.

➔ In other words, in such a case, ITC attributable to exempt supplies need to be reversed.

⇒ Section 17(3) provides that the value of exempt supply u/s 17(2) shall be such as may be prescribed, and shall include -

- Supplies on which the recipient is liable to pay tax on RCM basis,
- Transactions in securities,
- Sale of land and, subject to clause (b) of paragraph 5 of schedule ii, sale of building.

⇒ The CGST (Amendment) Act, 2018 has inserted an explanation in this sub-section to clarify that 'value of exempt supply' for the purpose of this sub-section shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule, i.e. sale of land and sale of building.

◉ CRUX - Therefore, while in all other items of Schedule III, ITC will not be required to be reversed; in case of sale of land and sale of building, ITC will need to be reversed.

3) ***Scope of blocked credits reduced [Clauses (a) and (b) of section 17(5) of the CGST Act]***

⇒ The CGST (Amendment) Act, 2018 has substituted clauses (a) and (b) of section 17(5) with a view to expand the scope of ITC availability.

⇒ Provisions relating to credit availability have undergone a change in respect of goods and services like motor vehicles, vessels and aircrafts, general insurance, servicing, repair and maintenance, food & beverages, outdoor catering, membership of club, travel benefits etc.

⇒ Under the amended position, the restriction and availability of ITC in respect of such goods and services is as under:

Sec 17(5) – **ITEMS INELIGIBLE FOR CREDIT [BLOCKED CREDITS]**

Blocked Credits

Notwithstanding anything contained in Sec 16(1) and Sec 18(1),

ITC shall not be available in respect of the following, namely:—

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(1)	(2)	(3)	(4)
(i)	Motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver)	Such motor vehicles when used for - a) making further taxable supply of such motor vehicles; b) making taxable supply of transportation of passengers; c) making taxable supply of imparting training on driving such motor vehicles.	⦿ *ITC on motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver) used for any purpose other than ones mentioned is not allowed.* ⦿ *ITC on motor vehicles for transportation of persons with seating capacity > 13 persons (including the driver) used for any purpose is allowed.* ⦿ *ITC on any other motor vehicle (e.g. motor vehicle used for transportation of goods, dumpers, tippers etc.) used for any purpose is allowed.*

Motor Vehicle [Sec 2(76)]	shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988.

As per section 2(28) of the Motor Vehicles Act, 1988, "motor vehicle" or "vehicle" means

- *any mechanically propelled vehicle adapted for use upon roads*
- *whether the power of propulsion is transmitted thereto from an external or internal source*
- *and includes a chassis to which a body has not been attached and a trailer;*
- *but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimetres.*

Examples

1) **ITC on cars purchased by a manufacturing company for official use of its employees is blocked.**

2) **ITC on cars purchased by a car dealer for sale to customers is allowed.**

3) **ITC on cars purchased by a company engaged in renting out cars for transportation of passengers, is allowed.**

4) **ITC on cars purchased by a car driving school is allowed.**

5) **ITC on buses purchased by a company for transportation of its employees from their residence to office and back, is allowed.**

6) **ITC on trucks purchased by a company for transportation of its finished goods is allowed.**

Question - Axis Bank has purchased a van for transportation of cash (money). Whether ITC of such motor van is admissible?

- As per amended Sec 17(5) of CGST Act (w.e.f. 1st Feb, 2019), ITC of passenger vehicles of seating capacity upto 13 passengers is blocked. Thus, credit is denied only in respect of motor vehicles used for transport of passengers. ITC of all other motor vehicles is admissible.
- Cash carrying vans are not used for 'transport of passengers' but for 'transport of cash'; hence, they are eligible for credit.
- Therefore, Axis Ban can avail ITC of van purchased for transportation of cash/money.

Note:
1. Pre-amendment (upto 31st Jan, 2019): [JUST for KNOWLEDGE]
As per sec. 17(5), motor vehicles used for transport of goods are eligible. However, 'cash' being currency is excluded from definition of goods u/s 2(52) of the CGST Act. Therefore, cash carrying vans are not used for 'transport of goods' and they are merely used for 'transport of cash'. Hence, they are ineligible for credit [it was also so held by Authority of Advance Ruling in case of CMS Info Systems Limited- 2018-AAR]

Blocked credits -

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(1)	(2)	(3)	(4)
(ii)	Vessels and aircrafts	Vessels and aircraft when used for- a) making further taxable supply of such vessels or aircraft; b) making taxable supply of transportation of passengers; c) making taxable supply of imparting training on navigating such vessels; d) making taxable supply of imparting training on flying such aircrafts; e) transportation of goods.	⦿ *ITC on vessels and aircrafts used for any purpose other than the ones mentioned is not allowed.*

Examples

1) **ITC on aircraft purchased by a manufacturing company for official use of its CEO is blocked.**

2) **ITC on aircraft purchased by an Aviation School providing training on flying aircrafts, is allowed.**

Blocked credits -

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(1)	(2)	(3)	(4)
(iii)	General insurance, servicing, repair and maintenance relating to: • Motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver), • Vessels • Aircraft	Such services relating to motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver) when used for purposes mentioned in Sl Nos. (i) of column (3) above Such services relating to vessels or aircraft when used for purposes mentioned in Sl. No. (ii) of column (3) above Such services when received by a taxable person engaged – - in the manufacture of such motor vehicles (as mentioned in Sl. No. (iii) of column 2), vessels or aircraft; or - in the supply of general insurance services in respect of such motor vehicles (as mentioned in Sl. No. (iii) of column 2), vessels or aircraft insured by him	◉ *ITC is not allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is not allowed.* ◉ *ITC is allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is allowed.*

Examples -

1) ITC on general insurance taken on a car used by employees of a manufacturing company for official purposes, is blocked.
2) ITC on maintenance & repair services availed by a company for a truck used for transporting its finished goods, is allowed.

Blocked credits -

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(1)	(2)	(3)	(4)
(iv)	• Food and beverages • Outdoor catering • Beauty treatment • Health services • Cosmetic and plastic surgery • Leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is not allowed • Life insurance and health insurance	• Such goods and/or services when used by a registered person for making an outward taxable supply of the same category of goods and/or services (sub-contracting) or as an element of a taxable composite or mixed supply • When such goods and/or services are provided by an employer to its employees under a statutory obligation	⦿ *ITC on such goods and/or services when used for any purpose other than the ones mentioned in Sl. No. (iv) of column (3), is not allowed.* ⦿ *When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.*

Examples -

1) AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. ITC on such outdoor catering services availed by AB & Co., is allowed.
2) ITC on outdoor catering services availed by a company, for a team development event organised for its employees, is blocked.
3) ITC on outdoor catering service availed by a company to run a canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed.

Blocked credits -

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(1)	(2)	(3)	(4)
(v)	• Membership of a club, health and fitness centre	- When such services are provided by an employer to its employees under a statutory obligation	◉ *When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.*
(vi)	• Travel benefits extended to employees on vacation such as leave or home travel concession	- When such services are provided by an employer to its employees under a statutory obligation	◉ *When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.*

Significant Notifications/ Circulars/ Orders

1) Transfer of credit on obtaining separate registrations for multiple places of business within a State / Union territory [New rule 41A inserted in the CGST Rules]

[Notification No. 03/2019 CT dated 29.01.2019]

⇒ Consequent to the introduction of enabling provisions for obtaining separate registrations for multiple places of business in a State/ Union territory, a new rule 41A has been inserted in the CGST Rules to prescribe provisions for transfer of ITC in such situations. The rule has become effective from 01.02.2019.

⇒ The new rule lays down that a registered person (transferor) who has obtained separate registration for multiple places of business and who intends to transfer, either wholly or partly, the unutilised ITC lying in his electronic credit ledger to any or all of the newly registered place of business, should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations.

⇒ Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC would get credited to his electronic credit ledger.

⇒ **The ITC is transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration. Here, the 'value of assets' means the value of the entire assets of the business whether or not ITC has been availed thereon.**

<table>
<tr><td colspan="2">Rule 41-A: : Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory [inserted vide N/N 03/2019-CT, w.e.f. 1-2-2019]</td></tr>
<tr><td>(1)</td><td><u>Filing credit-transfer application within 30 days of registration of new place</u>
A registered person —
… who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and
… who intends to transfer, either wholly or partly, the unutilized input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business.
shall furnish the details in FORM GST ITC-02A —
… within a period of 30 days from obtaining such separate registrations,
… electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner:

Transfer of ITC in ratio of value of assets held by them at time of registration [Proviso] :
Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.

<u>Value of entire assets to be used [even if no credit taken]</u>
Explanation: For the purposes of this sub-rule, it is hereby clarified that 'value of assets' means —
… the value of the entire assets of the business
… whether or not input tax credit has been availed thereon.

<u>For example</u>
A taxable person has registration at Delhi – Krishna Nagar (for entire Delhi). Now, he wants to take separate registration for Laxmi Nagar premise. His credit at Delhi-Krishna Nagar will be apportioned between Krishna Nagar (Delhi) and Laxmi Nagar (Delhi) in ratio of value of assets held by Krishna Nagar (Delhi) and Laxmi Nagar (Delhi) at time of registration at Laxmi Nagar (Delhi) and so on.</td></tr>
<tr><td>(2)</td><td><u>Acceptance by transferee and credit to his account</u>
The newly registered person (transferee) shall, on the common portal accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilized input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.</td></tr>
</table>

2) ***<u>Value of assets for the purpose of apportionment of ITC in case of demerger to include value of entire assets of the business, whether or not ITC has been availed thereon [Explanation inserted after proviso to rule 41(1) of the CGST Rules]</u>***

[Notification No. 16/2019 CT dated 29.03.2019]

⇒ **Rule 41 prescribes provisions for transfer of credit on sale, merger, amalgamation, lease or transfer of a business. Proviso to sub-rule (1) of the said rule lays down that in the case of de-merger, the ITC shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.**

⇒ An explanation has been inserted after the said proviso to clarify that for the purpose of this sub-rule, the "value of assets" means the value of the entire assets of the business, whether or not ITC has been availed thereon.

3) *Value of exempt supplies and total turnover for the purpose of reversal of ITC under rules 42 and 43 to exclude central sales tax also [Rules 42(1) and 43(1) of the CGST Rules]*

[Notification No. 03/2019 CT dated 29.01.2019]

⇒ Rules 42 and 43 of the CGST Rules provide the manner of determination of ITC in respect of inputs, input services and capital goods and reversal thereof.

⇒ Essentially, the rules provide that when inputs, input services and capital goods are used for both taxable and exempt activity, ITC attributable to exempt supplies out of the total turnover, need to be reversed.

⇒ For this purpose, prior to amendment, the value of exempt supplies and the total turnover excluded central excise duty, State excise duty and VAT as levied under entry 84 of List I and entries 51 and 54 of List II of Seventh Schedule.

⇒ With effect from 01.02.2019, the value of exempt supplies and the total turnover under rules 42 and 43 will exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

✪ *In other words, apart from excise duty, State excise duty and VAT, the value of exempt supplies and the total turnover as provided under rules 42 and 43 would now exclude central sales tax also.*

Rule 42/ 43:
Explanation: For the purpose of this clause the aggregate value of exempt supplies and total turnover shall exclude the amount of any duty or tax levied under … Entry 84 [Central ED] and Entry 92-A [CST] of List I of the Seventh Schedule to the Constitution and … Entry 51 [State ED] and Entry 54 [VAT] of List II of the said Schedule

Explanation (c): Exclusion of non GST taxes for pro rata reversals

ATO as per Sec 2(6) = Total value of all supplies of goods and/or services (excluding GST)

		Basic Price	Non-GST Tax	GST	Total	Exempt Supply / TO (as per Explanation) – for purposes of ITC apportionment
Supply of X	GST Goods	10,00,000	-	50,000	10,50,000	10,00,000
Supply of Y	GST Goods	20,00,000	-	3,60,000	23,60,000	20,00,000
Supply of product Alcoholic Liquor	Non-GST Goods	10,00,000	VAT= 40,000	-	10,40,000	10,00,000
Supply of Petrol	Non-GST goods	20,00,000	CST= 2,00,000	-	22,00,000	20,00,000

4) ***Clause (a) of explanation to rules 42 and 43 of the CGST Rules omitted***

[Notification No. 03/2019 CT dated 29.01.2019]

⇒ Earlier, clause (a) of explanation to rules 42 and 43 provided that the value of exempt supplies exclude the values of services specified in Notification No. 42/2017 IT (R) dated 27.10.2017, i.e. services having place of supply in Nepal or Bhutan, against payment in Indian Rupees. This clause has been omitted from the explanation with effect from 01.02.2019.

⇒ With effect from 01.02.2019, in case of export of services, wherever permitted by the Reserve Bank of India, receipt of payment in Indian rupees has been allowed. This has been done since in the case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations.

⇒ Therefore, the supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees can now be considered as export of services and consequently, exemption available to such services has also been withdrawn.

⇒ In this backdrop, the exclusion of such services from value of exempt supplies is no more required.

5) ***Other miscellaneous amendments in rules 42 and 43 of the CGST Rules – Effective from 01.04.2019***

[Notification No. 16/2019 CT dated 29.03.2019]

Rule 42 of the CGST Rules provides the methodology for apportionment of ITC on inputs and input services and reversal of ineligible credit as follows:

Rule 42 - Manner of determination of ITC in respect of INPUTS OR INPUT SERVICES and reversal thereof [In case of inputs and input services]	
(1)	***Formula for computing amount relatable to business – PROVISIONAL Computation for each tax period (month):*** The ITC in respect of inputs or input services, which attract the provisions of Sec 17(1) or 17(2), being ➔ partly used for the purposes of business and partly for other purposes, or ➔ partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely, -

Step - 1: Computation of common credit	
T	Total input tax involved on inputs and input services in a tax period
T1	Less: Input tax, out of 'T', attribute to inputs and input services intended to be used ⇒ **EXCLUSIVELY for the purposes other than business**
T2	Less: Amount of input tax, out of 'T' attributable to inputs and input services intended to be used ⇒ **EXCLUSIVELY for effecting exempt supplies**
T3	Less: Amount of input tax out of 'T' in respect of inputs and input services ⇒ **on which credit is not available u/s 17(5) [Blocked Credits]**

C1	Input tax credit credited to the electronic credit ledger of registered person i.e., **C1 =T - (T1 + T2 + T3)**
T4	Less: Input tax credit attributable to inputs and input services intended to be used ⇒ **<u>EXCLUSIVELY</u> for effecting supplies other than exempted *but including zero rated supplies*** **<u>Declaration in GSTR-2 invoice-wise:</u>** **'T1', 'T2', 'T3' and 'T4' shall be determined and declared by the registered person at the invoice level in FORM GSTR -2 and at summary level in GSTR 3B.** *In case of Invoice-wise identification: Where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T1' and 'T2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T4'* ***<u>Analysis:</u>*** ***Earlier clause (g) of rule 42(1) of CGST Rules provided that 'T1', 'T2', 'T3' and 'T4' should be determined and declared by the registered person at the invoice level in GSTR 2. It may be noted that GSTR 2 is not in operation as of now.*** ***The said clause has been amended to provide that 'T 1', 'T2', 'T3' and 'T4' should be determined and declared by the registered person at the invoice level in GSTR 2 and at summary level in GSTR 3B.***
C2	**Common Credit = C1 - T4**

Step -2: Attribution	
E	Aggregate value of exempt supplies during the tax period **(excluding Central Excise duty / State Excise duty and VAT / CST levied on non-GST supplies)** **<u>Notification No. 3/2018 – Central Tax [Dated 23rd January 2018]</u>** "Explanation:- For the purposes of rule 42 and rule 43, it is hereby clarified that the aggregate value of exempt supplies shall exclude:- a) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, [except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances]; and b) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.";
'F'	Total turnover in the State of the registered person during the tax period **(excluding Excise duty and VAT / CST levied on non-GST supplies)** ***<u>Last tax period figures to be used if current period data not available:</u>*** Where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated

	D1	**Input tax credit attributable towards exempt supplies = (E ÷F) x C2**
	D2	**Credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes = Deemed at 5% of C2**
	C3	Balance common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies = **C2 - (D1 + D2)** Separate computation for each kind of GST: the amount **'C3', 'D1' and 'D2'** shall be computed separately for ITC of CGST, SGST, UTGST and IGST **and declared in GSTR 3B or through a prescribed form (FORM GST DRC-03).** ***Analysis:*** ⇒ ***Earlier Rule 41(2)(a) provided, inter alia, that where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates.*** ⇒ ***The said clause has been amended to provide that where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be reversed by the registered person in GSTR 3B or in the prescribed form in the month not later than the month of September following the end of the financial year to which such credit relates.***
	D1 + D2	The amount equal to aggregate of 'D1' and 'D2' shall be **reversed by the registered person in GSTR 3B or in the prescribed form (FORM GST DRC-03).** ***Analysis:*** ⇒ ***Earlier clause (m) provided that the amount equal to aggregate of 'D1' and 'D2' should be added to the output tax liability of the registered person.*** ⇒ ***The said clause has been amended to provide that the amount equal to aggregate of 'D1' and 'D2' should be reversed by the registered person in GSTR 3B or in the prescribed form.***
(2)	***Final computation at year end - Deficit to be paid with interest @ 18% and Excess reversal can be claimed as re-credit:*** The ITC determined under sub-rule (1) shall be calculated finally … for the **financial year** … before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates ***[i.e., upto 20th October]*** … in the manner specified in the said sub-rule and - a) where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' such excess shall be - • **reversed by the registered person in GSTR 3B or in the prescribed form**	

- In the month not later than the month of September following the end of the financial year to which such credit relates and
- The said person shall be liable to pay interest on the said excess amount at the rate specified u/s 50(1) [i.e @18% p.a.]
- For the period starting from 1st April of the succeeding financial year till the date of payment; or

b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and D2', such excess amount shall be-
- Claimed as credit by the registered person
- In his return for a month
- Not later than the month of September following the end of the financial year to which such credit relates.

Rule 43 - Manner of determination of input tax credit in respect of CAPITAL GOODS and reversal thereof in certain cases [In case of CAPITAL GOODS]

(1) *Computation of amount to be reversed :*

Subject to the provisions of Sec 16(3) (i.e not claiming depreciation),
the ITC in respect of capital goods, which attract the provisions of Sec 17(1) and 17(2), being
- ➔ partly used for the purposes of business and partly for other purposes, or
- ➔ partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies,

shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

Step - 1: Computation of common credit

(a) *No credit for exclusively exempted or exclusively personal use:*

The amount of input tax in respect of capital goods
. . . used or intended to be used exclusively for non-business purposes or
. . . used or intended to be used exclusively for effecting exempt supplies
- ➔ **shall be indicated in FORM GSTR-2 and GSTR – 3B** and
- ➔ **shall not** be credited to his electronic credit ledger;

Analysis:

⇒ ***Earlier clause (a) of rule 43(1) of CGST Rules provided that the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in GSTR 2 and shall not be credited to his electronic credit ledger.***

⇒ ***The said clause has been amended to provide that the amount of input tax in respect of capital goods used or intended to be used exclusively for non- business purposes or used or intended to be used exclusively for effecting exempt supplies should be indicated in GSTR 2 and GSTR 3B and shall not be credited to his electronic credit ledger.***

(b) *Full credit of capital goods used exclusively for taxable/zero-rated supplies:*

The amount of input tax in respect of capital goods

… used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies

- ➔ shall be indicated in **FORM GSTR-2 and GSTR 3-B** and
- ➔ **shall** be credited to the electronic credit ledger;

Analysis:

⇒ ***Clause (b) has also been amended on the similar lines to provide that the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting taxable supplies including zero -rated supplies shall be indicated in GSTR 2 and GSTR 3B and shall be credited to the electronic credit ledger.***

(c) to (g) **Common Credit of other capital goods to be apportioned taking life as 5 years from date invoice:**

Particulars	
Total Input tax on commonly used capital goods [not falling under (a) or (b)] shall be credited to electronic credit ledger *[Useful life of such goods shall be taken as 5 years from the date of the invoice for such goods]*	A
Add: In case of capital goods [earlier exclusively exempted / person and now converted into common], Common credit will increase by = "Total input tax - 5% for every quarter or part thereof on such capital goods" Explanation - An item of capital goods declared as exclusively exempted/personal use on its receipt shall not attract provisions of Sec 18(4), if it is subsequently covered under this clause.	+A
Add: In case of capital goods [earlier exclusively taxable/business and now converted into common], Common credit will increase by = "Total input tax - 5% for every quarter or part thereof on such capital goods"	+A
Total common credit on all capital goods	**'Tc'**
Monthly credit [Tm = Tc ÷ 60]	**Tm**
Total of Tm for all such capital goods whose life remains during the current tax period	**Tr**
Amount for exempted supplies = (E÷F) × Tr Note: 1) 'E' is the aggregate value of exempt supplies, made, during the tax period **(excluding Excise duty and VAT / CST levied on non-GST supplies)** 2) 'F' is the total turnover **in the State** of the registered person during the tax period **(excluding Excise duty and VAT / CST levied on non-GST supplies)** 3) **Last year figures to be used if current period data not available:** Where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available previous to the month during which the said value of 'E/F' is to be calculated;	**Te**

		Analysis: ⇒ ***Earlier, clause (g) provided that 'F' is the total turnover of the registered person during the tax period.*** ⇒ ***The said clause has been amended to provide that 'F' is the total turnover in the State of the registered person during the tax period.*** **<u>Notification No. 3/2018 – Central Tax [Dated 23rd January 2018]</u>** "Explanation:- For the purposes of rule 42 and rule 43, it is hereby clarified that the aggregate value of exempt supplies shall exclude:- a) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, [except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances]; and b) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.";
(h)		the amount Te along with the applicable interest shall, … during every tax period of the useful life of the concerned capital goods, … be added to the output tax liability of the person making such claim of credit.
(i)		The amount Te shall be computed separately for central tax, State tax, Union territory tax and integrated tax and shall be declared in Form GSTR-3B **Analysis:** ⇒ ***Under the amended provisions of rule 43, the amount Te should be computed separately for ITC of CGST, SGST/UTGST and IGST and declared in GSTR 3B.***

6) *Utilization of GST*

SGST/ UTGST to be used for payment of IGST only when credit of CGST is not available [Section 49 of the CGST Act, 2017]

Section 49(5) prescribes the order of utilization of ITC. As per clause (c) and clause (d) of section 49(5), ITC of SGST/UTGST should first be utilized towards payment of SGST/UTGST and the amount remaining, if any, may be utilized towards payment of IGST.

The CGST (Amendment) Act, 2018 has inserted provisos after the said clause (c) and clause (d) to lay down that ITC on account of SGST/UTGST can be utilized towards payment of IGST only where the balance of the ITC on account of CGST is not available for payment of IGST.

ITC of IGST to be fully utilised first [New section 49A of the CGST Act, 2017]

The CGST (Amendment) Act, 2018 has inserted a new section 49A "Utilisation of input tax credit subject to certain conditions" in the CGST Act, 2017.

Section 49A provides that ITC of CGST, SGST/UTGST should be utilised towards payment of IGST, CGST, SGST/UTGST only after the ITC of IGST has first been utilised fully towards such payment. Section 49A starts with a non obstante clause, "Notwithstanding anything contained in section 49…." Thus, the provisions of section 49A would prevail over the provisions of section 49.

Order of utilization of ITC [New section 49B of the CGST Act, 2017]

The CGST (Amendment) Act, 2018 has inserted a new section 49B "Order of utilisation of input tax credit" in the CGST Act, 2017.

Section 49B provides that the Government may, on the recommendations of the Council, prescribe the order and manner of utilization of the ITC of IGST, CGST, SGST/UTGST towards payment of any such tax. Section 49B also starts with a non obstante clause, "Notwithstanding anything contained in this Chapter …."

Thus, the provisions of section 49B would prevail over the provisions contained in Chapter X: Payment of Tax. However, utilisation of ITC of CGST for payment of SGST/UTGST and vice versa will not be prescribed.

Clarification in respect of utilization of ITC under GST

CBIC has clarified that after the insertion of new rule 88A in the CGST Rules, 2017, the order of utilization of ITC will be as per the order (of numerals) given below:

ITC of	Output IGST liability	Output CGST liability	Output SGST / UTGST liability
IGST	**(I)**	**(II) – In any order and in any proportion**	
(III) ITC of IGST to be completely exhausted mandatorily			
CGST	**(V)**	**(IV)**	**Not permitted**
SGST/UTGST	**(VII)***	**Not permitted**	**(VI)**

'* ITC on account of SGST/UTGST should be utilized towards payment of IGST only after the ITC of CGST has been utilized fully.

The following illustration would further amplify the impact of newly inserted rule 88A:
Illustration:
Amount of ITC available and output tax liability under different tax heads

Head	Output tax liability	ITC
IGST	1000	1300
CGST	300	200
SGST/UTGST	300	200
Total	1600	1700

Option 1:

ITC of	Discharge of output IGST liability	Discharge of output CGST liability	Discharge of output SGST/UTGST liability	Balance of ITC
IGST	1000	200	100	0
ITC of IGST has been completely exhausted				
CGST	0	100	-	100
SGST/UTGST	0	-	200	0
Total	1000	300	300	100

Option 2:

ITC of	Discharge of output IGST liability	Discharge of output CGST liability	Discharge of output SGST/UTGST liability	Balance of ITC
IGST	1000	100	200	0
ITC of IGST has been completely exhausted				
CGST	0	200	-	0
SGST/UTGST	0	-	100	100
Total	1000	300	300	100

Chapter – Returns under GST

Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

Amendments in Returns provisions

1) *GST Practitioner enabled to perform other prescribed functions as well [Section 48(2) of the CGST Act]*

⇒ **Earlier, as per section 48(2) of the CGST Act, a registered person could authorise a Goods and Services Tax Practitioner (GSTP) to furnish its details of outward supplies, inward supplies and returns.**

⇒ **The CGST (Amendment) Act, 2018 has amended section 48(2) to provide as under:**
"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."

GST PRACTITIONERS [SECTION 48]

♦ Is it compulsory for a tax payer to file return by himself? [Hint: No. A registered taxpayer can also get his return filed through a Goods and Services Tax Practitioner: GSTR]

1) **Qualification:** The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for the functioning shall be such as may be prescribed.

2) **Filing of return through GSTP:** 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**

   [Amendment made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019]

   in such manner as may be prescribed.

Presently, they are authorized to furnish the details of outward and inward supplies and various returns under Sections 39, 44 or 45 on behalf of a registered person
Now, they are allowed to perform other functions such as filing refund claim, filing application for cancellation of registration etc., also. Thus, GST Practitioner has been enabled to perform other prescribed functions as well.

<u>Scope of activities that can be undertaken by a GSTP enhanced</u>

As per rule 83(8) of the CGST Rules, 2017, a GSTP could undertake any or all of the following activities on behalf of a registered person, if so authorised by him to-

a) furnish the details of outward and inward supplies;
b) furnish monthly, quarterly, annual or final return;
c) make deposit for credit into the electronic cash ledger;
d) file a claim for refund; and
e) file an application for amendment or cancellation of registration.

Under the amended position, apart from the above-mentioned activities, a GSTP could also undertake the following activities on behalf of the registered person:

f) furnish information for generation of e-way bill;
g) furnish details of challan in the prescribed form;
h) file an application for amendment or cancellation of enrolment under rule 58[1]; and
i) file an intimation to pay tax under the composition scheme or withdraw from the said scheme.

The said amendment has become effective from 01.02.2019.
[Notification No. 03/2019 CT dated 29.01.2019]

Provided that where any application relating to

- **a claim for refund or**
- **an application for amendment or cancellation of registration or**
- **where an intimation to pay tax under composition scheme or to withdraw from such scheme**

… has been submitted by GST Practitioner authorised by the registered person,
… a confirmation shall be sought from the registered person and
… the application submitted by the said practitioner shall be made available to the registered person on the common portal and
… such application shall not be further proceeded with until the registered person gives his consent to the same

3) **Responsibility lies only on registered person:** Notwithstanding anything contained in sub-section (2) the responsibility for correctness of any particulars furnished in the return or other details filed by the

[1] As per section 35(2) of the CGST Act read with rule 58 of the CGST Rules, every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed. If such persons are not already registered, they shall obtain a unique enrolment number by applying electronically at the GST Common Portal.

goods and services tax practitioners **shall continue to rest with the registered person** on whose behalf such return and details are furnished.

Time period available to a sales tax practitioner/ tax return preparer enrolled as a GSTP to pass the examination conducted by NACIN increased from 18 months to 30 months

As per rule 83(3) of the CGST Rules, 2017, any person who has been enrolled as GSTP by virtue of being enrolled as a Sales Tax Practitioner or Tax Return Preparer under the earlier indirect tax laws could remain enrolled as a GSTP only for a period of 18 months from the appointed date unless he passed the examination conducted by NACIN (National Academy of Customs, Indirect Taxes and Narcotics) within the said period of 18 months.

With effect from 01.02.2019, the said sub-rule has been amended to provide that a sales tax practitioner and a tax return preparer shall be eligible to remain enrolled as GSTP only if he passes the said examination **within 30 months from the appointed date (i.e., upto 1-7-2017 + 30 months)**.

[Notification No. 03/2019 CT dated 29.01.2019]

Rule 83-A: Exams of GSTP [Inserted vide N/N 60/2018- dated 30th Oct, 2018)]

NACIN (National Academy of Customs, Indirect Taxes and Narcotics), Department of Revenue, Ministry of Finance, GoI, shall conduct the examination.

- Nature of Exams: Computer Based Test (MCQ- Multiple Choice Questions based)
- Passing Marks: 50% or above
- Frequency of Exams: twice in a year
- Enrollment for examination: Online on website specified by NACIN (Exam Fees as fixed by NACIN shall be payable)
- Attempts Allowed: Any number of attempts [within permissible period of 2 years (permissible period is 30 months for existing Sales tax practitioners or TRP enrolled as GSTP)]

Chapter – Exemptions

Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

Amendments in Exemptions

1) Definition of "local authority" amended [Section 2(69) of the CGST Act]

Section 2(69) of the CGST Act defines "local authority". Prior to amendment, by virtue of clause (f) of section 2(69), local authority meant a Development Board constituted under article 371 of the Constitution.

Sec 2 (69) Local Authority
"Local Authority" means—
(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;
(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the CG or any SG with the control or management of a municipal or local fund;
(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
(f) a Development Board constituted under article 371 **and article 371-J *** of the Constitution; or
(g) a Regional Council constituted under article 371A of the Constitution;

The said clause has been amended vide the CGST (Amendment) Act, 2018 to provide that a local authority would mean a Development Board constituted under article 371 as well as article 371J of the Constitution.

Article 371 of the Constitution grants special status to Maharashtra and Gujarat. Under this article, the President is empowered to establish a separate Board to ensure equitable distribution of funds in the State's budget to meet the developmental needs of the region.

Article 371J of the Constitution grants special status to 6 backward districts of Karnataka-Hyderabad region. Under this article, the President is empowered to establish a separate Board to ensure equitable distribution of funds in the State's budget to meet the developmental needs of the region.

Development board constituted Article 371J of the Constitution will now be considered as local authority.

Significant Notifications/ Circulars/ Orders

1) ***Amendments relating to exemptions for supply of services***

New entry 21B inserted - New exemption

Entry No. 21-B [GTA service to certain persons who registered solely for purpose of complying with TDS provisions] [inserted w.e.f. 1st Jan, 2019]

Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to, -

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

(b) local authority; or

(c) Governmental agencies,

which has taken GST registration only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

New entry 27A inserted- New exemption

Entry No. 27-A [Service to Basic Saving Bank Deposit A/c Holder in Jan Dhan Yojna]

Services provided

… by a banking company

… to Basic Saving Bank Deposit (BSBD) account holders

… under Pradhan Mantri Jan Dhan Yojana (PMJDY)

Entry 34A amended – Scope of exemption enhanced

Entry No. 34-A (services of providing GUARANTEE for loans) [amended w.e.f. 1st Jan, 2019]

Services supplied

… by Central/State Government/Union territory

… to their undertakings or Public Sector Undertakings (PSUs)

… by way of guaranteeing the loans taken by such undertakings or PSUs **from the banking companies** and financial institutions

(The words 'banking companies' have been inserted in the entry)

New entry 74A inserted- New exemption

Entry No. 74-A (Services of Rehabilitation Professionals) [inserted w.e.f. 1st Jan, 2019]

Services provided

… by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992

… by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act

… at medical establishments, educational institutions, rehabilitation centres established by Central/State Government/ Union territory or an entity registered under section 12AA of the Income Tax Act, 1961

Rehabilitation Centre – role thereof: Rehabilitation becomes essential when an individual loses direction into the wrong path and needs to be brought back to the right one. It is a challenging situation when an individual must learn to live an addiction free life after going through the treatment. A complete treatment and training is provided to clients, wherein they are given occupational, vocational and physical therapy depending on each ones' needs.

Entry 67 withdrawn

~~Entry No. 67 (IIM – specified Post Graduate Programmes (excluding executive development programme) [Omitted w.e.f. 1st Jan, 2019]~~
~~Services provided~~
~~… by the Indian Institutes of Management (IIM), as per the guidelines of the CG,~~
~~… to their students,~~
~~… by way of the following educational programmes, except Executive Development Programme: –~~

~~(a) 2 year full time Post Graduate Programmes in Management (PGPM) for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the IIM;~~
~~(b) fellow programme in Management; (FPM)~~
~~(c) 5 Years integrated programme in Management. (IPM)~~

The Indian Institutes of Management Act, 2018 which came into force on 31st January, 2018. According to provisions of the IIM Act, all the IIMs listed in the schedule to the IIM Act are "institutions of national importance". They are empowered to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Therefore, with effect from 31st January, 2018, all the IIMs are "educational institutions" as defined under N/N 12/ 2017- CT (Rate) as they provide education as a part of a curriculum for obtaining a qualification recognised by law for the time being in force.

Earlier, services provided by Indian Institutes of Managements (IIMs) as covered under entry No. 67 of said notification were exempt. However, under the amended position, with effect from 01.01.2019, entry No. 67 has been omitted as IIMs are now covered under the definition of 'educational institution' whose services are exempt under entry No. 66 of the said notification.

In this regard, Circular No. 82/01/2019 GST dated 01.01.2019 has clarified as under:
With effect from 31.01.2018, all the IIMs are "educational institutions" as defined under Notification No. 12/ 2017 CT (R) dated 28.06.2017 as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.

IIMs also provide various short duration/ short term programs for which they award participation certificate to the executives/ professionals as they are considered as "participants" of the said programmes. These participation certificates are not any qualification recognized by law. Such participants are also not considered as students of IIM. Services provided by IIMs as an educational institution to such participants is *not exempt from GST. Such short duration executive programs attract standard rate of GST @ 18% (CGST 9% + SGST 9%)*

<u>Eligibility of various programs conducted by IIM for exemption from GST.</u>

Periods	*Programmes offered by Indian Institute of Management*	*Whether exempt from GST*
01-01-2019 Onwards	*All long duration programs (one year or more) conferring degree/diploma as recommended by Board of governors as per the power vested in them under the IIM Act, 2017 including one year Post Graduate Programs for Executives.* *Examples :* *1) Post-Graduate Programme (PGP) – 2 years program* *2) Post-Graduate Programme in Food and Agri-Business Management (PGP-FABM) – 2 years program* *3) Fellow Programme in Management (FPM) – 4 to 5 years pgoram* *4) Post-Graduate Programme in Management for Executives (PGPX) – 12 months (1 year) full time program* *5) Post-Graduate Programme (ePGP) = 2 year online program.*	*Exempt from GST*
	All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law. *Examples :* *1) Armed Forces Programme* *2) Faculty Development Programme* *3) Executive Education* *a) Customized Executive Programmes* *b) Open Enrolment Programme*	*Not exempt from GST*

Illustration - Education service provided by IIM :

Indian Institute of management furnishes you the following information of its receipts for the month ending April 2019 (sums in Rs.)

Gross receipts from -

(1) Student pursuing 2 year full time post Graduate Programmes in Management 2,00,00,000
(2) Student pursuing fellow Programme in Management 40,00,000
(3) Participants pursuing short duration (3 months) Executive development programme. 20,00,000

Compute value of taxable supply and GST liability if applicable GST is 18%.

<u>New entries 41A and 41B inserted- New exemption</u>

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property

<u>Entry No. 41-A Transfer of (Development Rights) / (FSI)– by any person- to PROMOTER- for construction of RESIDENTIAL APARTMENTS in the project -- exempt, if apartment sold before completion</u>

(inserted w.e.f. 1st April, 2019)

Service

… by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI)

… on or after 1st April, 2019

… for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly,

… except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier

<u>Entry No. 41-B (Upfront amount for LTL of 30 years or more – by any person- to PROMOTER- for construction of RESIDENTIAL APARTMENTS in the project -- exempt, if apartment sold before completion</u>

Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 1st April, 2019 for construction of residential apartments

… by a promoter in a project, intended for sale to a buyer, wholly or partly,

… except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Long term lease consists of 2 consideration:
(a) Upfront Amount (known as lease premium, salami etc)
(b) Periodic Rent
Exemption under Entry 41-B is available only to "upfront amount". [Thus, GST shall be payable on periodic rents. Promoter shall be liable to pay GST under RCM]

2) ***<u>Clarification on availability of GST exemption on the upfront amount payable in installments for long term lease of plots</u>***

⇒ In respect of GST exemption granted vide Entry 41 on the upfront amount which is determined upfront but is paid or payable in instalments for long term (30 years, or more) lease of industrial plots or plots for development of financial infrastructure, it has been clarified vide Circular No. 101/20/2019 GST dated 30.04.2019 that GST exemption on the upfront amount is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, **<u>provided the amount is determined upfront.</u>**

Chapter – Time of Supply

Amendments made by the CGST (Amendment) Act, 2018 – Effective from 01.02.2019

Amendments in Time of Supply

1) *Drafting errors in sections 12 and 13 of the CGST Act rectified*

Prior to the amendment, section 12(2) of the CGST Act provided that the time of supply of goods is the earliest of the following dates, namely:—

a) the date of issue of invoice by the supplier or the last date on which he is required, under section 31(1), to issue the invoice with respect to the supply; or
b) the date on which the supplier receives the payment with respect to the supply.

However, it may be noted that Notification No. 66/2017 CT dated 15.11.2017 specifies that a registered person (excluding composition supplier) should pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a).

Section 31(1) requires that a registered person supplying taxable goods shall, before or at the time of removal or delivery of goods, issue a tax invoice. However, section 31 contains other situations as well, where invoice is to be raised, e.g. continuous supply of goods, goods sent on approval basis etc.

Section 12(2)(a) has been amended by the CGST (Amendment) Act, 2018 to omit the reference of "sub-section (1)" therefrom.

Thus, under the amended position, for determining the time of supply of goods, the date of issue of invoice by the supplier or the last date on which he is required, under section 31 [and not only section 31(1)] will need to be considered.

Similar amendment has been made in section 13 which prescribes the provisions for determining the time of supply of services.

As per section 13(2), the time of supply of services shall be the earliest of the following dates, namely:—

a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) section 31 or the date of receipt of payment, whichever is earlier; or
c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply

Here also, section 13(2) has been amended to omit the reference of "sub-section (2)" from clause (a) and clause (b) thereof.

Thus, under the amended position, for determining the time of supply of services, the invoice issued within the period prescribed under section 31 [and not only section 31(2)] will need to be considered.

Significant Notifications/ Circulars/ Orders

2) Special procedure for determining the time of supply of services in certain cases

With effect from 01.04.2019, supply of services by a landowner to a developer by way of –

1) transfer of transferable development rights (TDR) or floor space index (FSI);
2) granting of long term lease,

for construction of residential apartments have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate or first occupation of the project, whichever is earlier, and tax is paid on them.

Such exemption for TDR, FSI, long term lease (premium) shall not be available in case of flats which remain un-booked on the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

The promoter (developer) shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of

(i) value of development rights and/or FSI, or
(ii) upfront amount paid for long term lease, as is attributable to such un-booked residential apartments.

In view of the above change, with effect from 01.04.2019, a special procedure for payment of tax has been laid down for following classes of registered persons, namely-

a) a promoter who receives development rights or FSI (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;
b) a promoter, who receives long term lease of land on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount* [Such upfront amount is called as premium, salami, cost, price, development charges or by any other name]

For such persons, the liability to pay tax on, -

a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);
b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;
c) the upfront amount paid by him for long term lease of land relatable to construction of residential apartments in the project; and

d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI),

shall arise

- on the date of issuance of completion certificate or
- first occupation of the project,

whichever is earlier.