



AMENDMENTS IN INDIRECT TAX LAWS

FOR CA FINAL MAY 24 EXAM

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SEGMENT 1 – INTRODUCTION TO GST

No amendments in this segment

SEGMENT 2 - SUPPLY UNDER GST

Clarification on taxability of shares held in a subsidiary company by the holding company – CBIC Circular¹

- ➔ Securities are considered as neither goods nor services as per section 2(52) and 2(102) of the CGST Act, 2017.
- ➔ Further, securities include 'shares' as per definition of securities U/s 2(h) of Securities Contracts (Regulation) Act, 1956.
- ➔ This implies that the securities held by the holding company in the subsidiary company are neither goods nor services.
- ➔ Therefore, purchase or sale of shares or securities, is neither a supply of goods nor services.
- ➔ The SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", does not construe that merely by holding the shares of subsidiary company, the services are being provided by holding company to the subsidiary, unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act.
- ➔ Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

Clarification on taxability of the supply of foods or beverages in cinema halls – CBIC Circular²

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

The cinema operators may run these refreshments or eating stalls/ kiosks/counters or restaurant themselves or they may give it on contract to a third party.

It has been clarified that supply of food or beverages in a cinema hall shall be taxable as 'restaurant service' as long as:

- a) the food or beverages are supplied by way of or as part of a service, and
- b) supplied independent of the cinema exhibition service.

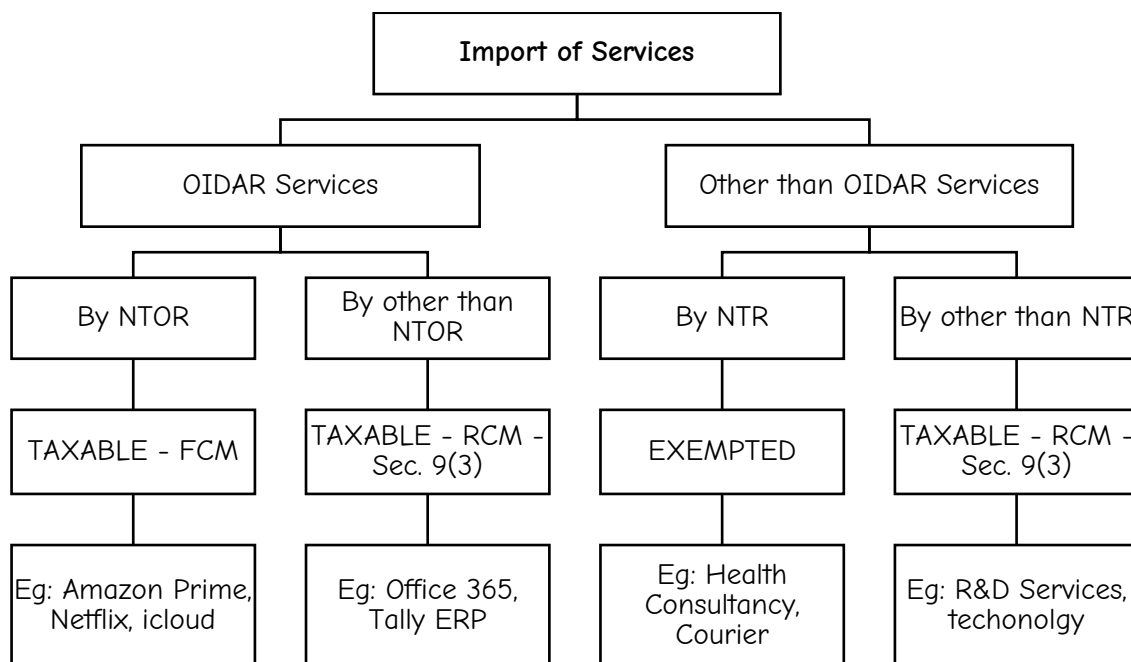
¹ Circular No. 196/04/2023 (Dt: 17.07.23)

² Circular No. 201/13/2023 (Dt: 01.08.23)

It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema i.e., the principal supply.

SEGMENT 3 - LEVY AND COLLECTION UNDER CGST

Meaning of OIDAR and NTOR amended:



➤ **OIDAR** = Online Information Database Access or Retrieval Eg: Amazon Prime, Netflix, Online Interactive games

Meaning – Sec.2(17) of IGST Act:

“Online Information and Database Access or Retrieval Services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,—

- advertising on the internet.
- providing cloud services.
- provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet.
- providing data or information, retrievable or otherwise, to any person in electronic form through a computer network.
- online supplies of digital content (movies, television shows, music and the like);
- digital data storage; and
- online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017;

- ➔ **NTOR** = Any unregistered person receiving online information and database access, or retrieval services located in the taxable territory including registered person, who is registered only to deduct TDS under Sec. 51. [Sec. 2(16) of IGST Act, 2017]³

Option to be exercised by the GTA's to pay GST under FCM⁴

Goods Transport Agencies (GTAs) shall not be required to file Annexure V of Notification No. 11/2017-CT(R) dt. 28.06.2017 for opting to pay GST under forward charge every year. Such option can be exercised by GTAs during the period from 1st January to 31st March of the preceding financial year.

If a GTA has exercised the option to pay tax under forward charge for a particular financial year, it shall be deemed that the option has been exercised for the next and future financial years also unless the GTA files a declaration in Annexure VI that it wants to revert to the reverse charge mechanism during 1st January to 31st March of the preceding financial year.

Clarification regarding services supplied by director of the company in his personal capacity – CBIC circular⁵

It has been clarified that services supplied by a director of the company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property shall not be taxable under RCM. Only those services which are supplied by him in the capacity of director of the company or body corporate shall be taxable under RCM in the hands of the company or body corporate under Notification No. 13/2017-CT(R) dated 28.06.2017

Amendment in Sec. 9(5) – Liability to pay GST on supplier in case of transportation of passengers through OMINBUS⁶:

- As per Sec. 9(5) of CGST Act, 2017 in case of notified services through E Commerce Operator, liability to pay GST is on such E Commerce Operator.
- Transportation of passengers through any motor vehicle is notified for this purpose.
- However, in case of transportation of passengers through omnibus by a company, it is not covered under sec. 9(5), where the liability to pay GST is on supplier i.e., such company.
- If the transportation of passengers through omnibus service provider is other than company, then liability to pay GST is on ECO, as the same is covered under Sec. 9(5).

Supply of goods or services by Indian railways always covered under FCM – Amendment in Sec. 9(3) read with Notification No. 13/2017⁷

- Supply of goods or services by government may be covered under RCM in some cases.
- However, if such goods or services supplied by Indian Railways, it will always be covered under FCM.

³ Amended Vide Finance Act, 2023

⁴ Notification No. 6/2023 and 8/2023 (Dt: 26.07.23)

⁵ Circular No. 201/13/2023-GST (Dt: 01.08.23)

⁶ Notification No. 17/2017-CT(R) dt. 28.06.2023

⁷ Notification No. 14/2023-CT(R) dt. 19.10.2023

SUPPLIES OF GOODS TAXABLE UNDER REVERSE CHARGE, I.E., SUPPLY OF THE GOODS WHERE TAX IS PAYABLE BY THE RECIPIENT – SEC. 9(3) READ WITH NOTIFICATION NO. 4/2017

S. No.	Description of supply of Goods	Supplier of goods	Recipient of supply
1.	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	Tobacco leaves	Agriculturist	Any registered person
3A.	Certain essential oils other than those of citrus fruit	Any unregistered person	Any registered person
4.	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A.	Raw cotton	Agriculturist	Any registered person
5.	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent.
6.	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government excluding Ministry of Railways (Indian Railways), State Government, Union territory or a local authority	Any registered Person
7.	Priority Sector Lending Certificate	Any registered person	Any registered person

SEGMENT 4 - LEVY AND COLLECTION UNDER IGST

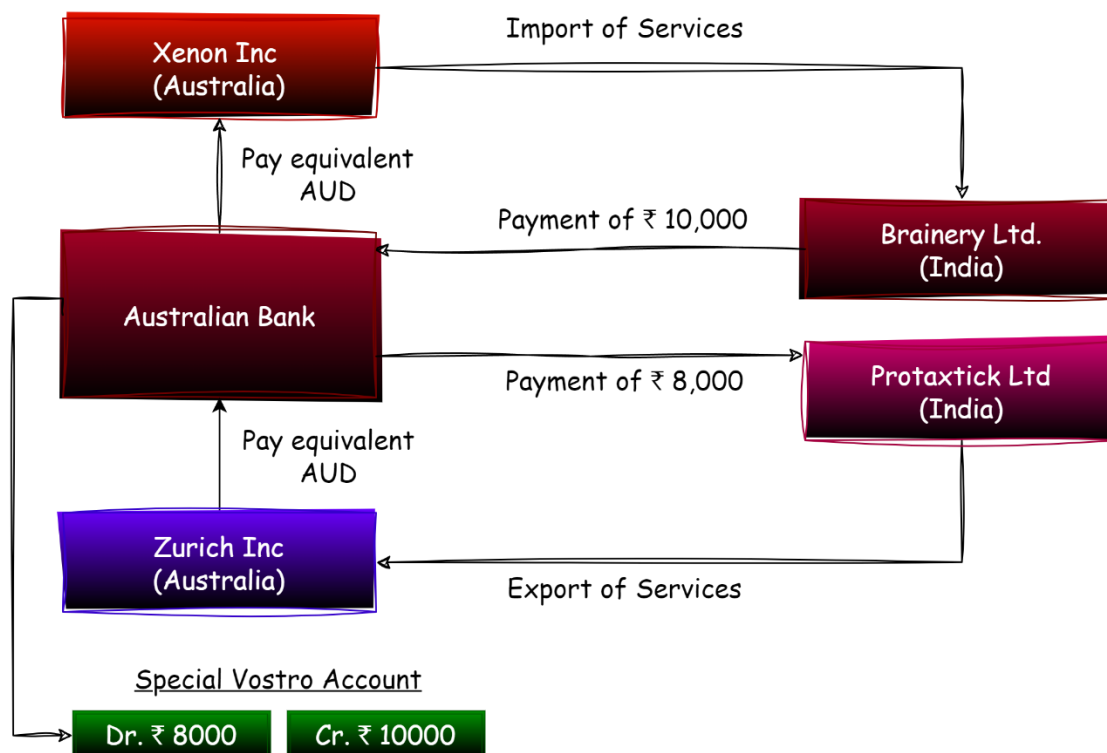
No GST on Ocean freight in case both supplier of service and recipient of service located outside India:

- The Supreme Court in the case of Union of India & Anr. v. M/s Mohit Minerals Pvt. Ltd. Civil Appeal No. 1390 of 2022 dated May 19, 2022 has held that IGST on ocean freight in case where both supplier and recipient of services located outside India, as unconstitutional.
- Now the same is notified that GST will not be leviable on ocean freight under reverse charge on CIF contracts of import of goods by the Indian importers, w.e.f 1st October, 2023

Clarification relating to export of services – Section 2(6)(iv) of the IGST Act, 2017 – Circular No. 202/14/2023-GST dt. 27.10.2023

Export of service is defined in section 2(6) of the IGST Act, 2017. As per clause (iv) of the said definition, the payment for the exported service must have been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India.

- For this purpose, a clarification has been issued regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services.
- In view of the above, it has been clarified that when the Indian exporters, undertaking export of services are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country opened by AD banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of clause(6) of section 2 of IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars and without prejudice to the permissions/ approvals, if any, required.



Amendments in Zero rated supply

Section-16	Zero rated supply
Sub-Section	Provision
(3) ⁸	A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed: Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the

⁸ Amended Vide Finance Act, 2021 w.e.f 1.10.23

	Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.
(4) ⁹	The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-- (I) a class of person who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid. (II) A Class of goods (or) services which may be exported on payment of integrated tax and the supplier of such goods (or) services may claim the refund of tax so paid.

Government notifies¹⁰ goods and services which may be exported on payment of IGST, and the refund can be claimed of the tax so paid –

Pursuant to amendment made by the Finance Act, 2021 in 16(4) of the IGST Act, 2017 becoming effective from October 1, 2023, all goods and services (other than the following goods) have been notified, which may be exported on payment of integrated tax and on which the supplier of such goods and services may claim the refund of tax so paid:

1. Pan-Masala
2. Certain specified tobacco products
3. Following essential oils other than those of citrus fruit namely: (a) Of peppermint; (b) Of other mints: Spearmint oil, Water mint-oil, Horsemint oil, Bergament oil, Mentha arvensis

SEGMENT 5 - EXEMPTIONS UNDER GST

Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants? - Circular No. 206/18/2023 (Dt: 31.10.23)

- Whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply shall be applicable.
- However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of the value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority? – Circular No. 206/18/2023 (Dt: 31.10.23)

⁹ Amended Vide Finance Act, 2023 w.e.f 1.10.23

¹⁰ Notification No. 01/2023 (Dt: 31.07.23) w.e.f 1.10.23

- DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district.
- They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.
- These activities are similar to activities that are enlisted in Eleventh and Twelfth Schedule of the Constitution.
- The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining-affected areas etc.
- The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.
- Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Notification no 12/2017? – Circular No. 206/18/2023 (Dt: 31.10.23)

Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD. Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the Constitution.

Notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, that are provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Accordingly, it has been clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Notification no 12/2017-CT(R) dated 28.06.2017.

Specified services provided to Government authority is exempted – Amendment in Notification No. 12/2017:¹¹

Services exempt from levy of GST Services provided to a Governmental Authority by way of water supply, public health, sanitation and conservancy, solid waste management and slum improvement and upgradation have been exempted from levy of GST.

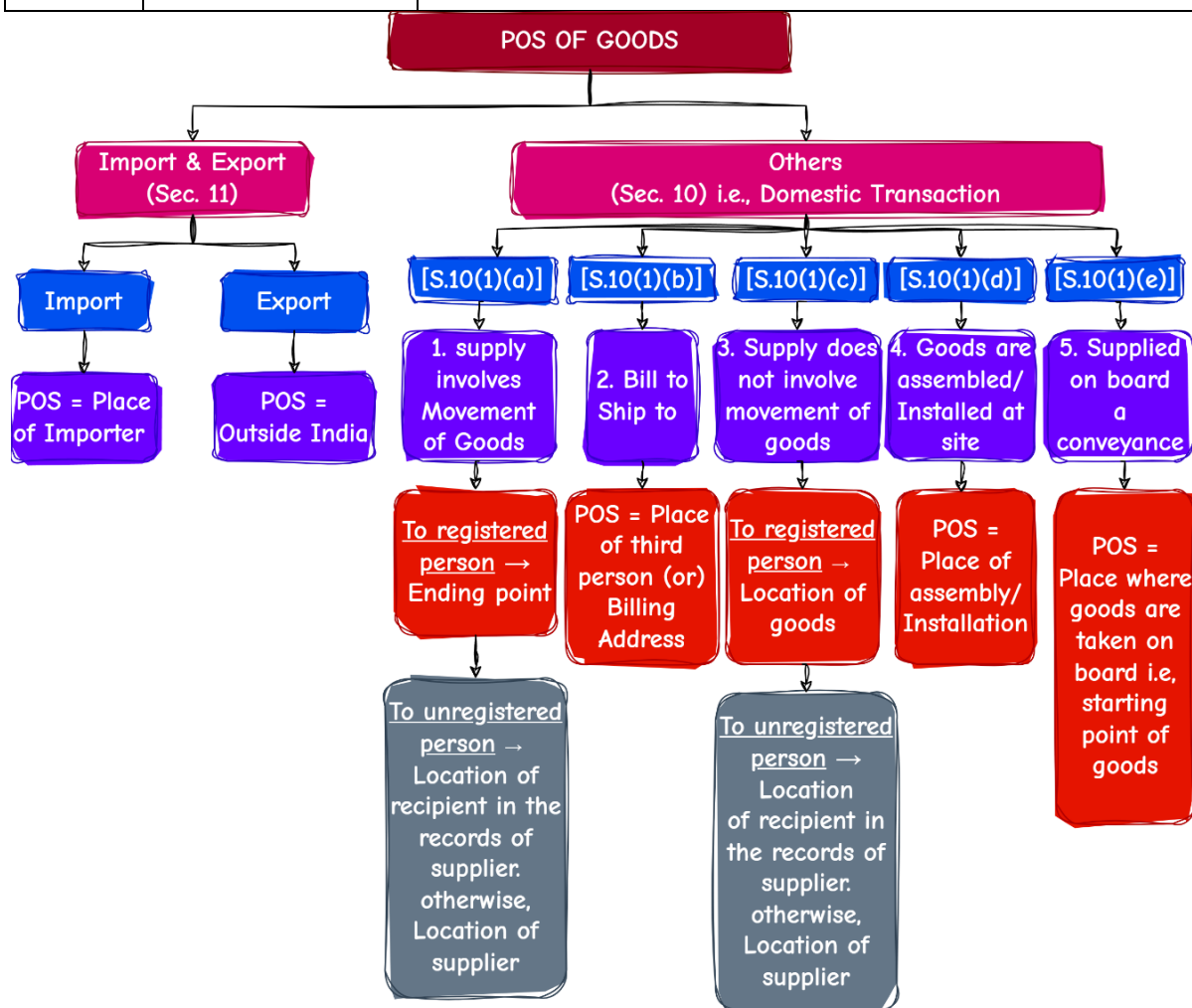
SEGMENT 6 – TIME OF SUPPLY

No amendments in this segment

¹¹ Notification No. 13/2023-CT(R) dt. 19.10.2023

New clause in POS in case of supply of goods made to an unregistered person:

10(1)(ca)	where the supply of goods is made to a person other than a registered person	<p>the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.</p> <p>Explanation: For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person</p>
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Amendment in POS in case of services by way of transportation of goods:

12(8)	Services by way of transportation of goods, including by mail or courier	<p>(a) <u>Registered person:</u> Place of supply shall be the location of such person</p> <p>(b) <u>Person other than registered person:</u> Place of supply shall be the location at which such goods are handed over for their transportation</p> <p>If goods are transported to a place outside India, then POS shall be the place of destination of such goods.¹²</p>
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13(9)	Services of transportation of goods , other than by way of mail or courier	POS shall be the place of destination of such goods ¹³
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Place of supply in case of supply of service of transportation of goods, including through mail and courier - Circular No. 203/15/2023-GST dt. 27.10.2023

- Section 13(9) of the IGST Act, 2017 which provided that the place of supply in case of service of transportation of goods, other than by way of mail and courier, in cases where location of supplier of services or location of recipient of services is outside India shall be the destination of such goods, has been omitted vide Finance Act, 2023, w.e.f. 01.10.2023.
- Consequently, after the amendment comes into force, the place of supply in such case shall be determined by the default rule under section 13(2) of the IGST Act. Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.
- Further, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act.

Place of supply in case of supply of services in respect of advertising sector - Circular No. 203/15/2023-GST dt. 27.10.2023

Place of supply where there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure: The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth.

- Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act.
- As per section 12(3)(a), the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of

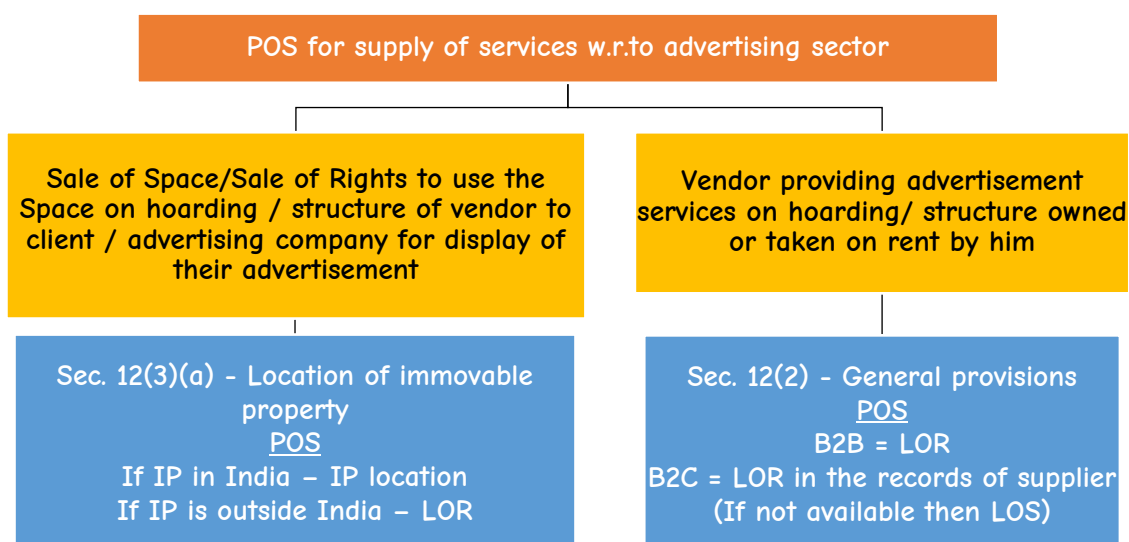
¹² Omitted Vide Finance Act, 2023 w.e.f 1.10.2023

¹³ Omitted Vide Finance Act, 2023 w.e.f 1.10.23

construction work shall be the location at which the immovable property is located. Hence, place of supply in such case shall be location where such hoarding/ structure is located.

Place of supply where the vendor himself owns the structure or takes it on rent or rights to use from another person and is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure.

- The said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act.
- The vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location.
- Therefore, such services provided by the vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of section 12(2) of IGST Act.

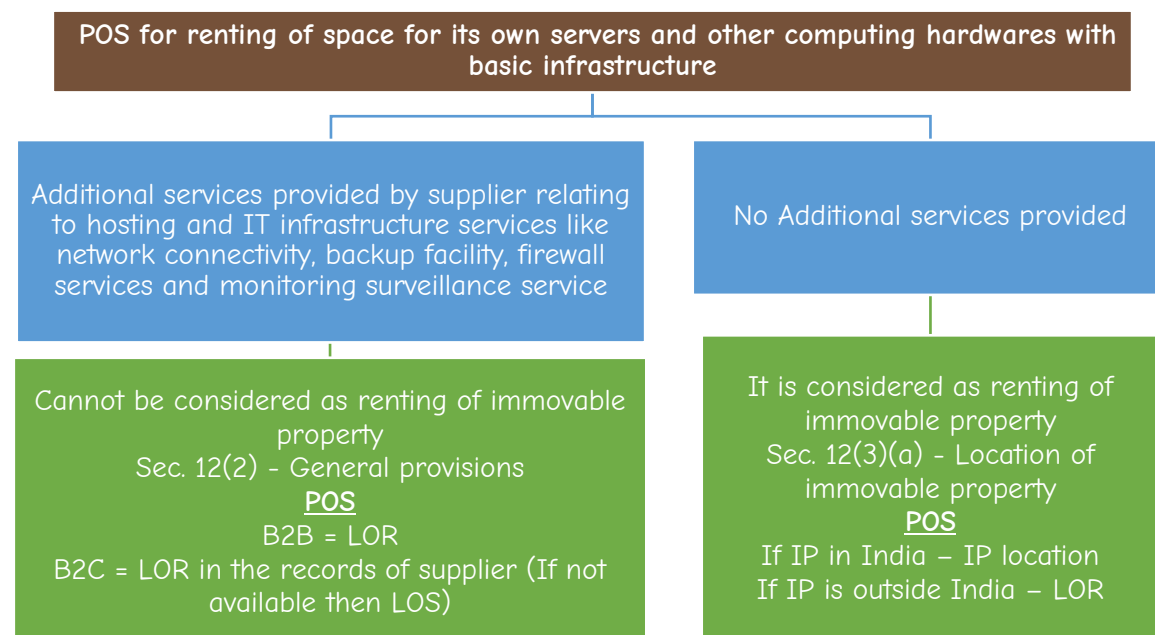


Place of supply in case of supply of the “co-location services” - Circular No. 203/15/2023-GST dt. 27.10.2023

- Co-location is a data centre facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure.
- It has been clarified that the Co-location services are in the nature of “Hosting and information technology (IT) infrastructure provisioning services.
- Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involve providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall

services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.

- Hence, in such cases, supply of colocation services cannot be considered as the service of renting immovable property.
- Therefore, the place of supply of the co-location services shall not be determined by the provisions of section 12(3)(a) of the IGST Act but shall be determined by the default provision under section 12(2) of the IGST Act i.e., location of recipient of co-location service.
- However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and IT Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of section 12(3)(a) of the IGST Act which is the location where the immovable property is located.



SEGMENT 8 – VALUE OF SUPPLY

Value of supply of goods or services or both between distinct or related persons, by way of providing corporate guarantee to any banking company or financial institution – Amendment in Rule 28 Vide Notification No. 52/2023 (Dt: 26.10.23)

The value of supply of services by a supplier to a recipient who is a related person, by way of providing **corporate guarantee** to any banking company or financial institution on behalf of the said recipient, shall be deemed to be **one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.**

Authors Note:

The difference between corporate and personal guarantors is quite simple: a **personal guarantor** is an individual who agrees to take on the obligations of a debt for a debtor, whereas a **corporate guarantor** is a corporation that takes on payment responsibilities

Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST. - Circular No.204/16/2023-GST dt. 27.10.2023

(a) Whether the activity of providing **personal guarantee** by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not?

- As per Explanation (a) to section 15, the director and the company are to be treated as related persons.
- As per section 7(1)(c) read with Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration.
- Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.
- In terms of rule 28 of the CGST Rules, the taxable value of such supply of service shall be the open market value of such supply.

However, as per RBI Circular No. RBI/2021-22/121 dated 9th November, 2021, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. Hence, when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, as per RBI mandate, there is no question of such supply/ transaction having any open market value. Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, the taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company.

However, in cases, where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases

	<p>where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly, <u>the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.</u></p>
<p>(b) Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services?</p>	<ul style="list-style-type: none"> ▪ Where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. ▪ Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per the provisions of Schedule I of CGST Act. ▪ Hence, in such a case, the taxable value will be <u>one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.</u> irrespective of whether full ITC is available to the recipient of services or not. <p>Further, it has been clarified that above value shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (a) above.</p>

Scenario	Whether it is supply	Value for payment of GST	GST payable by
(i) Director giving personal guarantee without any consideration	Yes u/s 7(1)(c)	Nil (CBIC Circular)	N.A
(ii) Director giving personal guarantee for consideration (Overriding RBI Circular)	Yes u/s 7(1)(a)	Actual consideration involved [Sec. 15]	Director provided they are registered (As the same is in their personal capacity)
(iii) Ex- Director giving personal guarantee without any consideration	No	N.A	N.A
(iv) Ex- Director giving personal guarantee for a consideration	Yes u/s 7(1)(a)	Actual consideration involved [Sec. 15]	Ex-Director (FCM) provided they are registered
(v) Corporate guarantee by a related company	Yes u/s 7(1)(c)	Rule 28	Company giving

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	without any consideration		1% of the amount for which guarantee is offered (or) actual consideration, whichever is higher	guarantee (FCM)
(vi)	Corporate guarantee by a related company for a consideration	Yes u/s 7(1)(a)		
(vii)	Corporate guarantee by an unrelated company without any consideration	No	N.A	N.A
(viii)	Corporate guarantee by an unrelated company for a consideration	Yes u/s 7(1)(a)	Actual consideration involved [Sec. 15]	Company giving guarantee (FCM)

Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return. [Rule 88D w.e.f 4.08.2023]:

(1) Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in **FORM GSTR-3B** exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in **FORM GSTR-2B** in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of **FORM GST DRC-01C**, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

(a)	pay an amount equal to the excess input tax credit availed in the said FORM GSTR-3B , along with interest payable under section 50, through FORM GST DRC-03 , or
(b)	explain the reasons for the aforesaid difference in input tax credit on the common portal,

within a period of seven days.

(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in the said sub-rule, either,

(a)	pay an amount equal to the excess input tax credit, as specified in Part A of FORM GST DRC-01C , fully or partially, along with interest payable under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01C , electronically on the common portal, or
(b)	furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess input tax credit that has still remained to be paid, if any, in Part B of FORM GST DRC-01C ,

within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains to be paid within the period specified in the said sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be.

Analysis:

- In the CGST Rule 88D, a mechanism is outlined for system-based notification of cases where the ITC claimed in [GSTR-3B](#) exceeds the prescribed available ITC amount in [GSTR-2B](#) by a certain percentage or amount.
- Once these cases are identified, the taxpayers may be informed through a system-generated intimation form—DRC-01C on their GST portal login and email address as registered with the GST portal, drawing attention to the discrepancy. It is conveyed in part-A of DRC-01C.
- The taxpayer must submit reasons for the excess ITC claim in part B of that form, and supporting documents (if any), or else pay towards the excess ITC. The action must be taken within seven days from receipt of intimation.
- Tax authorities will then review the response to validate the ITC claim and take appropriate actions

Rule 88C vs Rule 88D

Criteria	88C	88D
Trigger Point	Difference in Outward Supply – Liability declared in form GSTR 1 exceeds the tax payable in form GSTR 3B by such amount and such % age	Difference In ITC claimed - Credit availed in form GSTR 3B exceeds the credit as per auto generated statement in Form GSTR 2B
Communication by Department	Part A- GST DRC – 01B	Part A - GST DRC - 01C
Communication by	Upload on the Portal + E-Mail	Upload on the Portal + E-Mail
Response Time	7 Days	7 Days
Response to be filed in	Part B -GST DRC -01B	Part B - GST DRC – 01C
Options available	1. Pay the Difference 2. Explain the difference 3. Partial payment and explain the balance	1. Pay the Difference 2. Explain the difference 3. Partial payment and explain the balance
If no response / unsatisfactory response	Recovery of Tax under Section 79 + liability posted in Electronic liability ledger	SCN under Section 73/74
Impact on Filing of Returns / Access to GST Portal	1. Not allowed in file returns in Form GSTR 1 2. Rule 59 - Once GSTR 1 not filed. GSTR 3B filing gets blocked 3. Rule 138E – If GSTR 1 not filed for two consecutive tax periods, E-Way Bill facility gets blocked 4. Rule 21A – Suspension of registration	1. Not allowed in file returns in Form GSTR 1 2. Rule 59 - Once GSTR 1 not filed. GSTR 3B filing gets blocked 3. Rule 138E – If GSTR 1 not filed for two consecutive tax periods, E-Way Bill facility gets blocked 4. Rule 21A – Suspension of registration

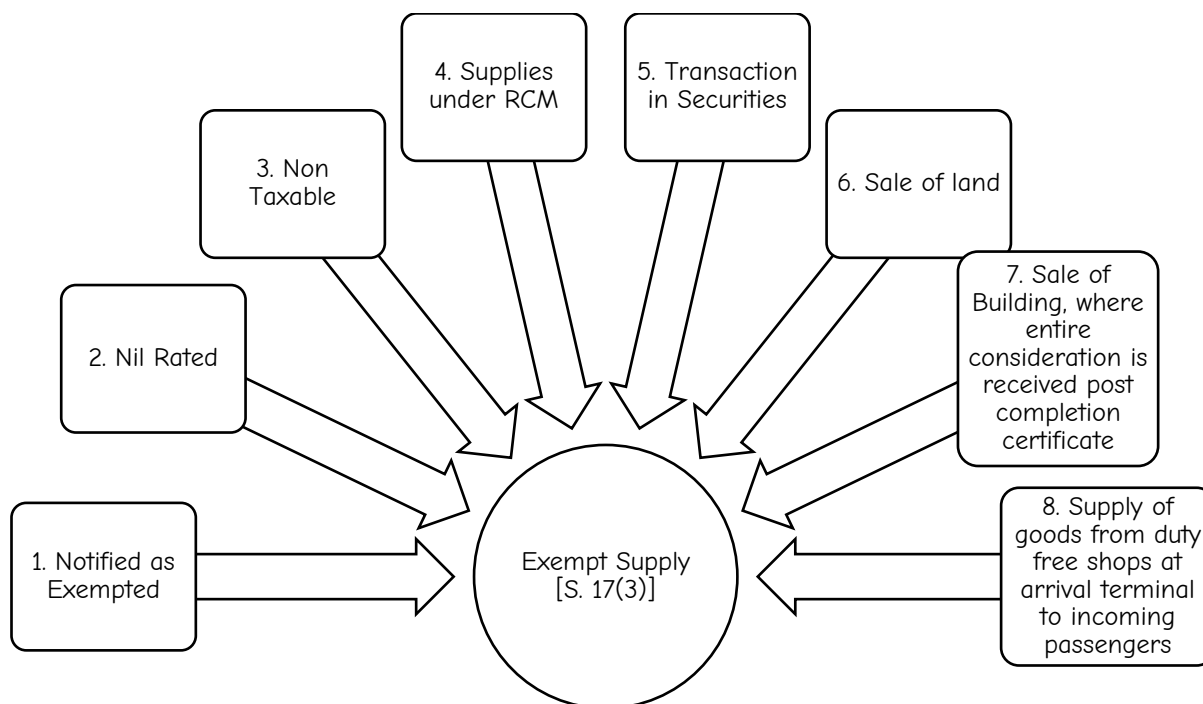
MEANING OF EXEMPT SUPPLY FOR AVAILMENT OF ITC:

Further **Section 17(3)** provides that the value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Explanation.— For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except the following

- a) Sale of land
- b) Sale of building, where entire consideration is received after obtaining completion certificate or first occupation, whichever is earlier.
- c) Supply of warehoused goods to any person before clearance for home consumption. (i.e., Value of supply of goods from duty free shops at arrival terminal in international airports to the incoming passengers)¹⁴

¹⁴ Inserted vide Finance Act, 2023 w.e.f 1.10.23



Value of exempt supply in respect of land and building is the stamp duty value and for security is 1% of the sale value of such security.

Blocked Credits- Section 17(5)

(fa)	goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013 ¹⁵
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Clarification on the taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons – CBIC Circular¹⁶

Issue – 1: Whether HO can avail the input tax credit (hereinafter referred to as 'ITC') in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as 'ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?

Clarification: It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but

¹⁵ Inserted Vide Finance Act, 2023 w.e.f 1.10.23

¹⁶ Circular No. 199/11/2023 (Dt: 17.07.23)

attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act.

In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act.

Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.

Issue – 2: In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the concerned BOs

Clarification: The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.

Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.

Issue – 3: In respect of internally generated services provided by the HO to BOs, in cases where full input tax credit is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.

Clarification: In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.

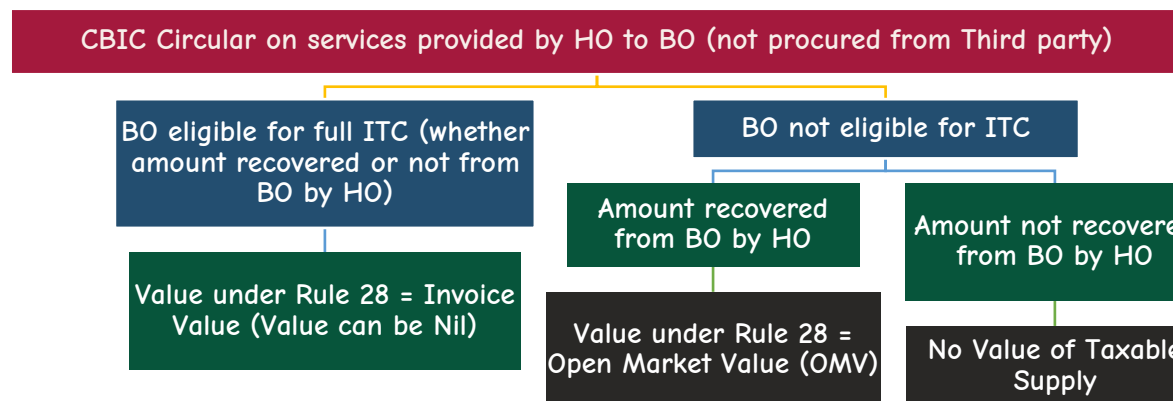
Circular No 199/11/2023 Dt: 17/07/2023

A

Issue 1: CBIC Circular on ISD or Cross charge

- Either ISD or Cross Charge can be followed by HO for distribution of credit to BO.
- In case of Cross Charge, Normal invoice raised by HO to BO (T/O ratio need not be followed) but those services should be attributable to BO.
- Cross Charge means invoice raised to one registered person who in turn raises invoice to another registered person.

Issue 2:



Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period. – CBIC Circular¹⁷

Case 1: The original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty.

The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. Therefore, in cases where no separate consideration is charged by the manufacturer at the time of such replacement/repair services, no GST is to be levied on such replacement of parts and/ or repair service during warranty period.

However, GST is levied in case additional consideration is charged for the same. These supplies cannot be considered as exempt supply as original supply is likely to include the cost of replacement/repair services to be incurred during warranty. Hence, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.

Case 2: The distributor provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer without charging any consideration from the customer.

Where no consideration is charged by the distributor from the customer, no GST is payable by the distributor on the said replacement/repair services provided during warranty period. In case additional consideration is charged, GST shall be payable. The treatment relating to the input tax credit and output liability relating to the replaced products will be as follows:

¹⁷ Circular No. 195/07/23 (Dt: 17.07.23)

a) In cases where the distributor replaces the part to the customer under warranty either by using his stock or by purchasing it from third party and charges the consideration of the same from the manufacturer, by issuance of a tax invoice then GST would be levied on the consideration charged by the distributor from the manufacturer. The manufacturer is eligible to take input tax credit of the same, subject to other GST provisions. Further, no reversal of input tax credit by the distributor is required in respect of the same.

b) In case where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty, then no GST would be payable, if no additional consideration is charged by the manufacturer in respect of parts replaced. Further, no reversal of input tax credit is required by the manufacturer is required in respect of same.

c) In cases where the distributor replaces the part to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note u/s 34 in respect of the parts replaced. The tax liability may be adjusted by the manufacturer, subject to the condition that the distributor has reversed the ITC availed against the parts so replaced.

Case 3: The distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services

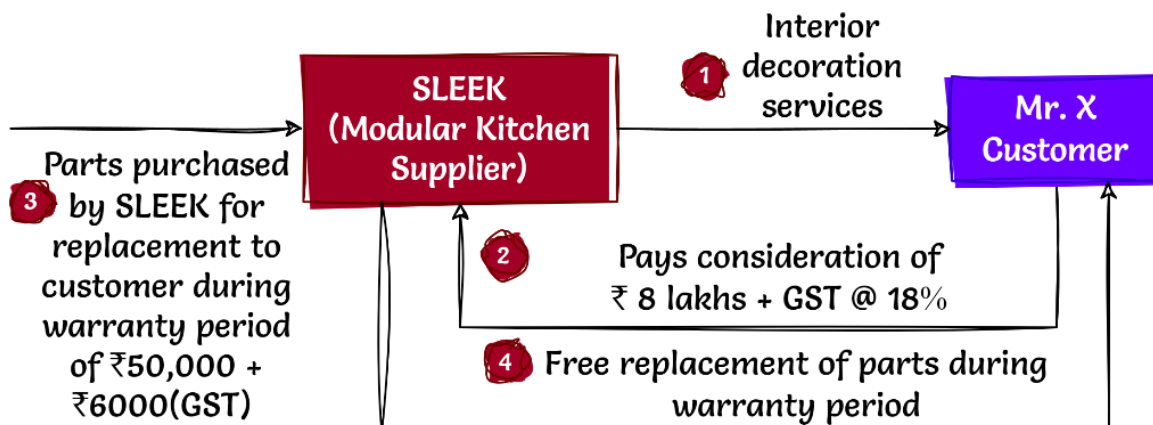
As per section 2(93)(a) of the CGST Act, 2017, in this case, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair service. Hence, GST shall be payable by the distributor on such supply of service to the manufacturer and the manufacturer would be entitled to claim input tax credit in respect of the said supply.

Case 4: Extended warranty services provided by manufacturers/distributors to the customers which can be availed at the time of original supply or before the expiry standard warranty period

- If the customer enters into an agreement for extended warranty at the time of original supply, then it would be considered as composite supply (principal supply being supply of goods). GST would be payable on the consideration for such extended warranty along with the principal supply at the rate applicable on the principal supply.
- If the customer enters into an agreement for extended warranty at any time after the original supply, then it would be considered as separate contract. GST would be payable by the service provider whether it be manufacturer or distributor or any third party depending on the nature of the contract.

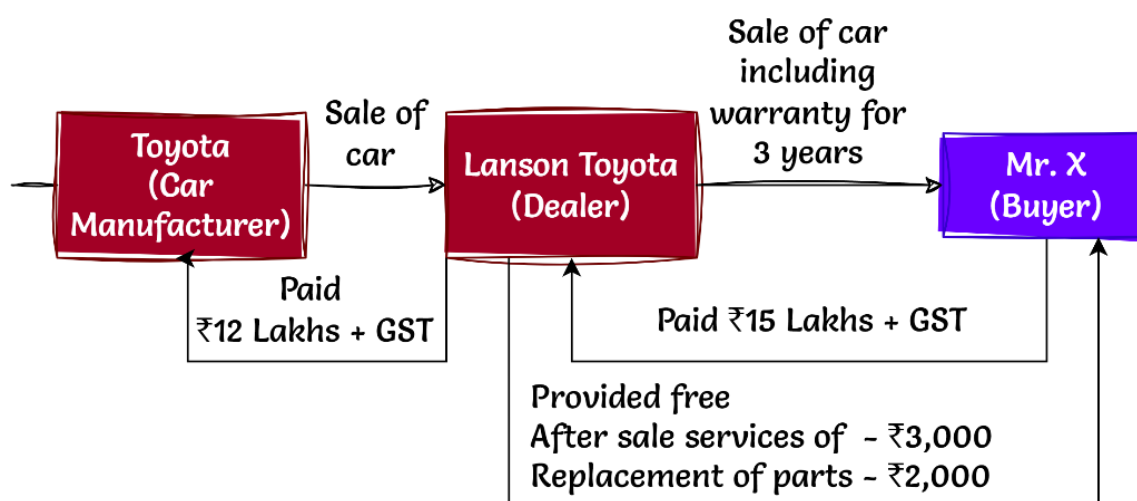
Circular on replacement of parts during warranty: A

Issue 1:



- ❖ Reversal of ITC by manufacturer shall not arise even if such replacement of parts is without any consideration
- ❖ If any consideration is charged w.r.to such replacement then it is supply u/s 7(1)(a) & GST is payable on such consideration (Reversal of ITC shall not arise)

Issue 2:



Situation 1: Lanson Toyota (Dealer) procured parts for replacement by 3rd party and charged consideration from Toyota (Manufacturer).

Dealer		Manufacturer	
➤ Invoice for recovery of cost from Toyota (Manufacturer)		➤ Toyota (Manufacturer) shall pay ₹ 5,900 to Lanson Toyota (Dealer) towards invoice raised by Lanson Toyota (Dealer)	
After sale services	₹3000	➤ ITC of ₹ 900 can be claimed by Toyota (Manufacturer)	
Replacement of parts	₹ 2000		
Total	₹ 5000		
+ GST 18%	₹ 900		
Invoice value	₹ 5900		

<ul style="list-style-type: none"> ➤ GST payable by Lanson Toyota (Dealer) = ₹ 900 ➤ ITC available (w.r.to parts purchased from third party) = ₹ 360 (₹ 2000 × 18%) ➤ No reversal of ITC is required by Lanson Toyota (Dealer) in case of replacement of parts 	
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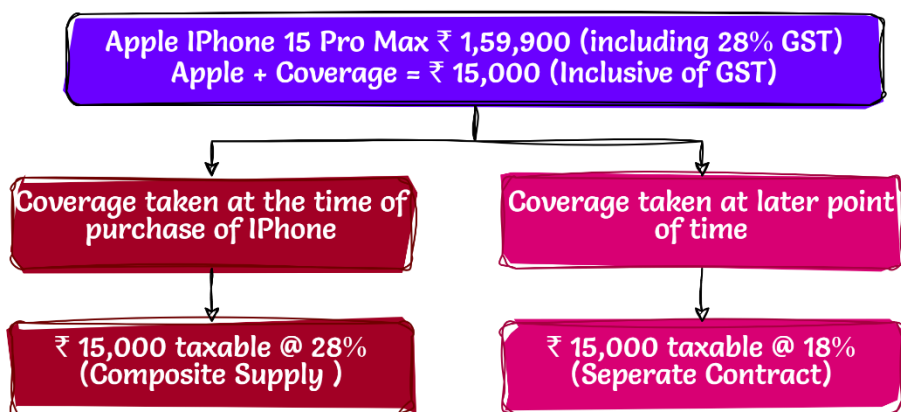
Situation 2: If replacement of parts are received by Lanson Toyota (Dealer) from Toyota (manufacturer)

Dealer	Manufacturer						
<ul style="list-style-type: none"> ➤ Invoice for recovery of cost from Toyota (Manufacturer) <table border="1" style="width: 100%;"> <tr> <td>After sale services</td> <td style="text-align: right;">₹3000</td> </tr> <tr> <td>+ GST 18%</td> <td style="text-align: right;">₹ 540</td> </tr> <tr> <td>Invoice value</td> <td style="text-align: right;">₹ 3540</td> </tr> </table> <ul style="list-style-type: none"> ➤ GST payable by Lanson Toyota (Dealer) = ₹ 540 	After sale services	₹3000	+ GST 18%	₹ 540	Invoice value	₹ 3540	<ul style="list-style-type: none"> ➤ Toyota (manufacturer) shall pay ₹ 3,540 to Lanson Toyota (Dealer) ➤ ITC of <ul style="list-style-type: none"> I. ₹ 540 can be claimed by Toyota (Manufacturer) w.r.to after sales services invoice II. ₹ 360 (₹ 2,000 × 18%) w.r.to parts procured by Toyota (Manufacturer) ➤ No reversal of ITC is required by Toyota (manufacturer) on the replacement of parts
After sale services	₹3000						
+ GST 18%	₹ 540						
Invoice value	₹ 3540						

Situation 3: 100 Nos of spare parts supplied by Toyota (Manufacturer) to Lanson Toyota (Dealer) @ ₹ 2,000 (excluding GST @ 18%). Out of that, one spare part is used as replacement during the warranty period.

Dealer	Manufacturer												
<ul style="list-style-type: none"> ➤ Lanson Toyota (Dealer) shall pay ₹ 2,36,000 to Toyota (Manufacturer) ➤ ITC can be claimed by Lanson Toyota (Dealer) ₹ 36,000 ➤ ITC must be reversed by Lanson Toyota (Dealer) based on credit note issued by Toyota (Manufacturer) - ₹ 360 ➤ Invoice for recovery of cost from Toyota (Manufacturer) <table border="1" style="width: 100%;"> <tr> <td>After sale services</td> <td style="text-align: right;">₹3000</td> </tr> <tr> <td>+ GST 18%</td> <td style="text-align: right;">₹ 540</td> </tr> <tr> <td>Invoice value</td> <td style="text-align: right;">₹ 3540</td> </tr> </table> <ul style="list-style-type: none"> ➤ GST payable by Lanson Toyota (Dealer) = ₹ 540 	After sale services	₹3000	+ GST 18%	₹ 540	Invoice value	₹ 3540	<ul style="list-style-type: none"> ➤ Invoice issued by Toyota (Manufacturer) to Lanson Toyota (Dealer) <table border="1" style="width: 100%;"> <tr> <td>Parts – 100 Nos × ₹ 2,000</td> <td style="text-align: right;">₹ 2,00,000</td> </tr> <tr> <td>+ GST 18%</td> <td style="text-align: right;">₹ 36,000</td> </tr> <tr> <td>Invoice value</td> <td style="text-align: right;">₹ 2,36,000</td> </tr> </table> <ul style="list-style-type: none"> ➤ Credit note to be issued by Toyota (Manufacturer) for one part which is used as replacement by the Lanson Toyota (Dealer) during warranty period → ₹ 2,000 + 360 (GST) ➤ Toyota (Manufacturer) shall pay ₹ 3,540 to Lanson Toyota (Dealer) w.r.to invoice raised by Lanson Toyota (Dealer). ➤ ITC can be claimed by Toyota (Manufacturer) of ₹ 540. 	Parts – 100 Nos × ₹ 2,000	₹ 2,00,000	+ GST 18%	₹ 36,000	Invoice value	₹ 2,36,000
After sale services	₹3000												
+ GST 18%	₹ 540												
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Parts – 100 Nos × ₹ 2,000	₹ 2,00,000												
+ GST 18%	₹ 36,000												
Invoice value	₹ 2,36,000												

Issue 3:



SEGMENT 10 – COMPOSITION SCHEME

Section 10 (2) AMENDMENTS MADE VIDE THE FINANCE ACT, 2020	The registered person shall be eligible to opt under sub-section (1), if—
(d)	he is not engaged in making any supply of goods or ¹⁸ services through an electronic commerce operator who is required to collect tax at source under section 52;

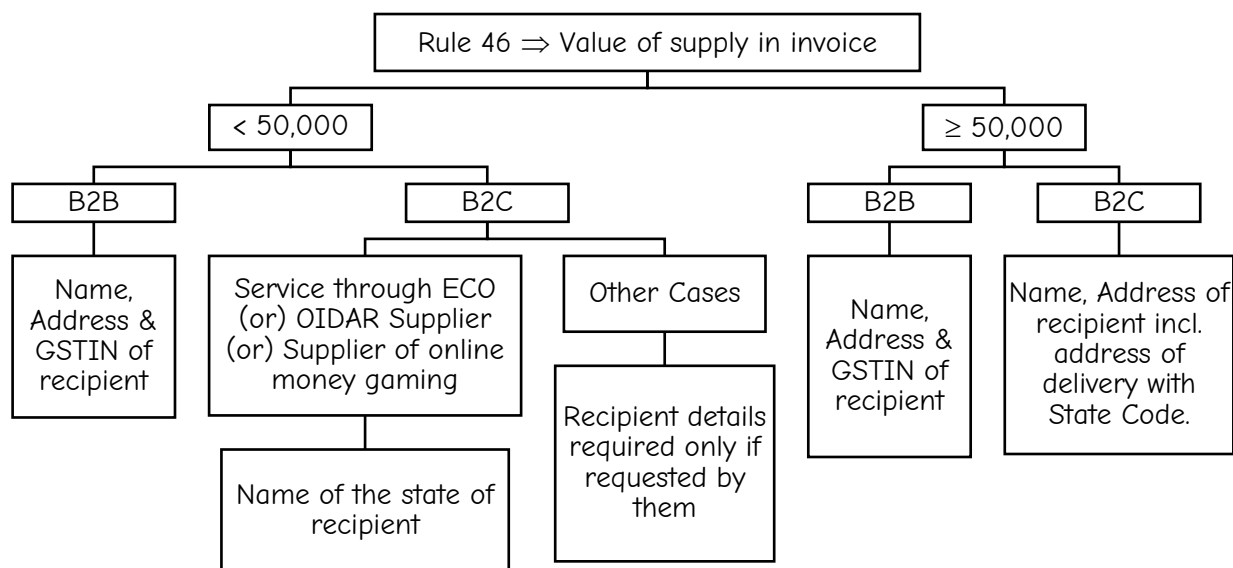
Section 10(2A) - Inserted by the Finance (No. 2) Act, 2019, w.e.f.1-1-2020:

(c)	engaged in making any supply of goods or ¹⁹ services through an electronic commerce operator who is required to collect tax at source under section 52;
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¹⁸ Omitted vide Finance Act, 2023 w.e.f 1.10.23

¹⁹ Omitted vide Finance Act, 2023 w.e.f 1.10.23

SEGMENT 11 – INVOICE, DEBIT & CREDIT NOTES

**E-Invoice for B2B Supplies (Rule 48(4)):**

- E-invoice has been made mandatory w.e.f. 1-4-2022 for registered persons whose aggregate turnover in any previous financial years exceeds ₹5 crores²⁰. E-Invoice is applicable in case of B2B supplies but not B2C Supplies.

Reporting of invoices on the IRP Portal w.e.f. 1/11/23:

A time limit of 30 days has been imposed for reporting of invoices including debit or credit note from the date of invoice, or as the case may be, date of issue debit or credit note on e-invoice portals for taxpayers with Aggregate Annual Turnover (AATO) greater than or equal to 100 crores.

Hence, the taxpayers in this category will not be allowed to report invoices older than 30 days on the date of reporting.

²⁰ Earlier, the limit was ₹10 crores. W.e.f 1st August 2023 it is reduced to ₹5 Crores.

Amendment in Form REG-01 – Application for Registration “One Person Company” has been added in the constitution of business in the Registration application Form REG-01. - Notification No. 52/2023-CT dt. 26.10.2023

Persons not liable for Registration [Sec. 23 of CGST Act]:

Section-23	Persons not liable for registration
	Provision
(2)	Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act. ²¹

Requirement of mandatory registration waived for persons supplying goods through an ECO, subject to certain conditions – Notification No. 34/2023 (W.e.f 1.10.23)

Exercising the power under section 23(2) of the CGST Act, 2017, the Central Government has specified the persons making supply of goods through an electronic commerce operator (ECO) who is required to collect tax at source under section 52 of the CGST Act, 2017 and having an aggregate turnover in the preceding and current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State/Union territory, as the category of persons exempted from obtaining registration, subject to the following conditions:

- a) such persons shall not make any inter-state supply of goods;
- b) such person shall not make supply of goods through ECO in more than one State or Union Territory;
- c) such persons shall be required to have PAN and will have to declare the same on the portal along with the address of the place of business and the State or Union territory in which he seeks to make such supply, which shall be subject to validation on the common portal;
- d) on successful validation of the details furnished, such person will be granted an enrolment number on the portal. Such persons shall not be granted more than one enrolment number in a State or Union Territory;
- e) no supplies shall be made by the persons through ECO unless he has obtained the enrolment number.
- f) Where such persons are subsequently granted registration under section 25 of the CGST Act, the enrolment number shall cease to be valid from the effective date of registration.

²¹ Amended Vide Finance Act, 2023 with retrospective effect from 1.7.2023

FAQ – 17: Whether bank details are required to be furnished at the time of application for registration?

- While applying for registration on GST portal, a person is required to furnish the details of his bank account.
- This requirement has now been **relaxed** to a limited extent, by inserting a new rule 10A to the CGST Rules.
- In pursuance to the same, the registered person is allowed to furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision, **soon after obtaining certificate of registration** and a GSTIN, **but not later than 30 days** from the date of grant of registration or the date on which the return required under section 37 (GSTR – 1 or IFF) is furnished, **whichever is earlier**. **[This is optional, a person may even furnish the bank details at the time of making application for registration]**
- This relaxation is not available for those who have been granted registration as TDS deductor/TCS collector under rule 12 or who have obtained suo-motu registration under rule 16.
- However, if a person violates the provisions of rule 10A, his GST registration is liable to be cancelled [Rule 21].

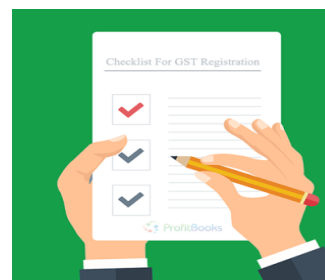


Illustration:

Registration granted on 03/11/23 and GSTR-1 for Nov 2023 filed on 12/12/23, time limit for furnishing Bank Details

a) 30 days from date of registration i.e., 3/12/23 (or)	Earlier i.e., 3/12/23
b) Date of filing first return i.e., 12/12/23	

If registration is granted on 18/11/23 and GSTR-1 for Nov 2023 filed on 12/12/23, time limit for furnishing bank details

a) 30 days from date of registration i.e., 18/12/23 (or)	Earlier i.e., 12/12/23
b) Date of filing first return i.e., 12/12/23	

TIME LIMIT FOR UPLOADING DETAILS OF PHYSICAL VERIFICATION:

- I. **Where the proper officer is satisfied that the physical verification of the place of business of a person is required AFTER the grant of registration:** he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal **within a period of 15 working days following the date of such verification.**
- II. **Where the physical verification of the place of business of a person is required BEFORE the grant of registration** the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal **at least 5 working days prior to the completion of the time period specified** in the said proviso.

Revocation of cancellation of registration [Sec. 30 of CGST Act]:

Section-30	Revocation of cancellation of registration
Sub-section	Provision
(1)	Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within ninety days from the date of service of the cancellation order. Further, on sufficient cause being shown and for reasons to be recorded in writing, such period can be extended by the Commissioner, or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding 180 days,. (Notification No. 38/2023 w.e.f 1.10.23)

SEGMENT 13 – PAYMENT PROCESS

Special procedure to be followed by an electronic commerce operators required to collect tax at source under section 52 in respect of supplies of goods made through it by Composition taxpayers – Notification No. 36/2023:

With effect from 01.10.2023, following procedure shall be followed by an electronic commerce operator who is required to collect tax at source under section 52 in respect of supply of goods made through it by a composition taxpayer

- i) It shall not allow any inter-State supply of goods made through it by the said persons;
- ii) It shall collect tax at source under section 52(1) in respect of supply of goods made through it by the said persons and pay to the Government as per provisions of 52(3);
- iii) It shall furnish the details of supplies of goods made through it by the said persons in Form GSTR-8 electronically on the common portal.

Special procedure to be followed by an electronic commerce operators required to collect tax at source under section 52 in respect of supplies of goods made through it by specific unregistered persons – Notification No. 37/2023

With effect from 01.10.2023, following procedure shall be followed by an electronic commerce operator who is required to collect tax at source under section 52 in respect of supply of goods made through it by a person who is exempted from taking registration under section 23(2) vide Notification No.34/2023- Central Tax, dated the 31st July, 2023 i.e., persons making supplies of goods through an electronic commerce operator who is required to collect tax at source under section 52 and having an aggregate turnover in the preceding financial year and in the current financial year below the threshold limit prescribed under section 22(1) of the CGST Act subject to certain other conditions:

- (i) It shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person in accordance with the Notification No.- 34/2023- CTdt.31.07.2023;
- (ii) It shall not allow any inter-State supply of goods made through it by the said person;
- (iii) It shall not collect tax at source under section 52(1) in respect of supply of goods made through it by the said person; and
- (iv) It shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

Where multiple electronic commerce operators are involved in a single supply of goods through electronic commerce operator platform, “the electronic commerce operator” shall mean the electronic commerce operator who finally releases the payment to the said person for the said supply made by the said person through him

DETAILS OF TCS FURNISHED BY ECO TO BE MADE AVAILABLE ELECTRONICALLY TO ONLY REGISTERED SUPPLIERS [RULE 67(2) AMENDED]

Unregistered suppliers of services and now unregistered suppliers of goods also are allowed to make supplies through ECOs till the time their turnover does not exceed the prescribed threshold limit. Rule 67 has been amended to clearly bring out that the details of TCS furnished by ECOs in Form GSTR-8 shall be made available only to the registered suppliers, as the supplies by unregistered persons do not attract TCS. Amended rule 67(2) provides as follows:

The details of tax collected at source under section 52(1) furnished by the ECO shall be made available electronically to each of the registered suppliers on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

CLARIFICATION ON TCS LIABILITY IN CASE OF MULTIPLE ECOS IN ONE TRANSACTION – CBIC CIRCULAR

- ❖ Such ECO who finally releases the payment to supplier is liable to deduct TCS
- ❖ Each ECO involved is required to pay GST on the commission earned by them

CLARIFICATION ON CHARGING OF INTEREST UNDER SECTION 50(3) IN CASES OF WRONG AVAILMENT OF IGST CREDIT AND REVERSAL THEREOF – CBIC CIRCULAR

- ❖ In the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under section 50(3) if, during the time period starting from such availment and up to such reversal, the balance of ITC in the ECL, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in ECL individually falls below the amount of such wrongly availed IGST credit.
- ❖ Credit of compensation cess available in ECL cannot be taken into account while considering the balance of ECL for the purpose of calculation of interest under rule 88B(3) in respect of wrongly availed and utilized IGST, CGST or SGST credit.

SEGMENT 14 – RETURNS UNDER GST

Amendment in Form PCT-01 - Application for Enrolment as Goods and Services Tax Practitioner - Notification No. 52/2023-CT dt. 26.10.2023:

The eligibility criteria for enrolment as GST Practitioner has been revised as follows:

S. No.	Old Criteria	Revised Criteria
1	Chartered Accountant holding COP	Chartered Accountant
2	Company Secretary holding COP	Company Secretary
3	Cost and Management Accountant holding COP	Cost and Management Accountant
4	Advocate	Graduate or Postgraduate or its equivalent degree in Law
5	Graduate or Postgraduate degree in Commerce	Graduate or Postgraduate or its equivalent degree in Commerce
6	Graduate or Postgraduate degree in Banking	Graduate or Postgraduate or its equivalent degree in Banking including Higher Auditing
7	Graduate or Postgraduate degree in Business Administration	Graduate or Postgraduate or its equivalent degree in Business Administration
8	Graduate or Postgraduate degree in Business Management	Graduate or Postgraduate or its equivalent degree in Business Management
9	Degree examination of any recognized Foreign University	Degree examination of any Foreign University recognized by any Indian University
10	Retired Government Officials	Retired Government Officials
11	Sales Tax practitioner under existing law for a period of not less than five years	Sales Tax practitioner under existing law for a period of not less than five years

AMENDMENTS IN INDIRECT TAX LAWS

12	Tax return preparer under existing law for a period of not less than five years	Tax return preparer under existing law for a period of not less than five years
13		Any other examination notified by Government

Sr. No. (4) to (8) of the table should be from an Indian University established by any law for the time being in force.

SEGMENT 15 – ACCOUNTS AND RECORDS, E WAY BILL

No amendments in this segment

SEGMENT 16 – REFUNDS UNDER GST

No refund of unutilised input tax credit u/s 54(3) in case of supply of certain services - Notification No.15/2023-CT(R) dt. 19.10.2023:

No refund of unutilised input tax credit shall be allowed under sub-section (3) of section 54 in case of supply of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, 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”.

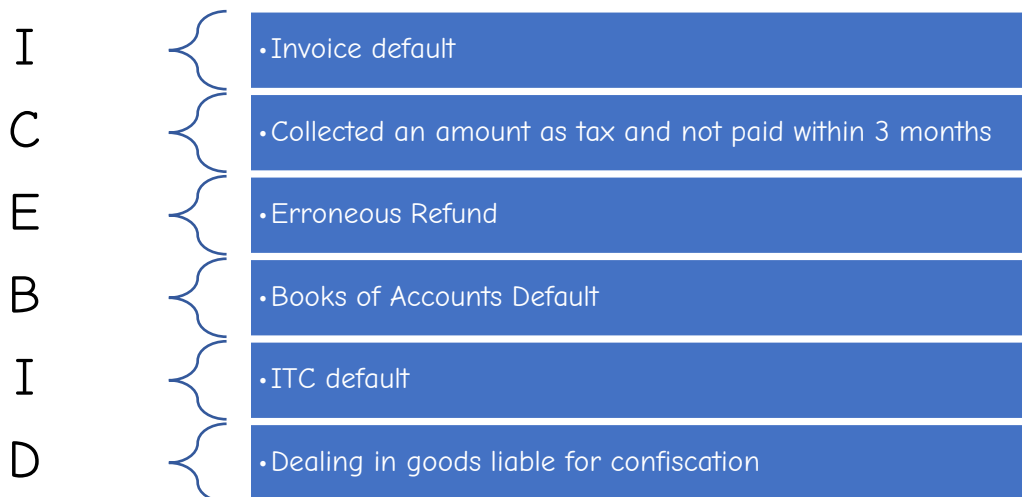
SEGMENT 17 – ASSESSMENT & AUDIT UNDER GST

Different types of assessments which may be conducted by department

Best Judgement Assessment (Sec. 62 & 63)
To make assessment of a) Non filers of returns (Monthly/Quarterly/ Final) u/s 39 b) Unregistered person, liable to pay tax
Assessment order shall be passed in ASMT 13 or ASMT 15 within 5 years from the due date of furnishing annual return for the relevant period
Where registration person furnishes a valid return within 60 days of ASMT 13 + 60 days with a late fee of ₹100 per day, such order shall be deemed to have been withdrawn. However, interest is payable

Imprisonment provisions with respect to above [Sec. 132]:

Following are the offences (ICE BID) that attracts imprisonment under GST and attempt to commit and abetting commission of these offences also attracts imprisonment.



Note: Collected tax not deposited within 3 months is also an offence that do no attract imprisonment. However, collected an amount as tax and not deposited within 3 months is an offence attracting imprisonment.

S.No.	Offence	Imprisonment – First Time	Imprisonment – Subsequent
1.	Books of Accounts default	Upto 6 months (or) Fine (or) Both	Upto 5 years AND Fine (Min 6 months)
2.	Other offences, where the amount involved > ₹5 Crores	Upto 5 years AND Fine (Min 6 months)	
3.	Other offences, where the amount involved > ₹2 Crores but ≤ ₹5 Crore	Upto 3 years AND Fine (Min 6 months)	
4.	Invoice default (i.e., issues invoice without supply), where the amount involved > ₹1 Crore but ≤ ₹2 Crore	Upto 1 year AND Fine (Min 6 months)	

Notes:

Compounding of Offences [Section 138] – Immunity from prosecution

Meaning of compounding	}	• Granting immunity from prosecution (i.e., imprisonment) upon payment of compounding fee by the offending person
Compounding fee		• As prescribed by the officer in the limits of 25% of tax involved to 100% of tax involved. • In addition to this compounding fee, such person should pay tax, interest and applicable penalty.
Restriction on first time compounding		• Invoice without supply • Prosecution order passed
Restriction on subsequent compounding		• All offences under Sec. 132
Special points		• Compounding is possible if prosecution is not initiated or during prosecution (But it should not be completed) • After initiation of prosecution, upon payment of compounding fee, all proceedings stand abated.

COMPOUNDING FEE NOTIFIED FOR VARIOUS OFFENCES:

S. No	Offence	Amount in offence > ₹ 5 Cr	Amount in offence > ₹ 2 Cr
1	Supply without invoice	I. Up to 75% of the amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken • Or II. 50% of such amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken whichever is higher.	I. Up to 60% of the amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken • Or II. 40% of such amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken whichever is higher. •
2	ITC default		
3	Collects an amount as tax & not paid within 3 months		
4	Erroneous refund		
5	Books of Accounts default	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6	Dealing in goods liable for confiscation		
7	Attempt to commit the offences or abets the commission of above offences	Amount equivalent to 25% of such amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken.

AMENDMENTS IN INDIRECT TAX LAWS

Note: However, where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.

SEGMENT 19 – DEMAND AND RECOVERY

Amendment in Rule 142 - Notice and Order for demand of amounts payable under the Act - Notification No. 52/2023-CT dt. 26.10.2023

As per the amended rule 142, where the person chargeable with tax makes payment of tax and interest under section 73(8) or 74(8) or where the person concerned makes payment of the amount referred to in section 129(1), within the time prescribed under the said rule, he shall intimate the proper officer of such payment in FORMGSTDRC-03 and the proper officer shall issue an intimation (instead of an order) in FORMGSTDRC-05 concluding the proceedings in respect of the said notice

Amendment in Rule 159 – Provisional Attachment of Property - Notification No. 52/2023-CT dt. 26.10.2023

Rule 159(2) has been amended to provide that the Revenue Authority or Transport Authority or any such Authority who has placed encumbrance on the movable or immovable property on the order of the Commissioner, shall remove such encumbrance on the written instructions from the Commissioner to that effect or on expiry of a period of one year from the date of issuance of order under sub-rule(1), whichever is earlier. Consequent amendment have been made in Form GST DRC-22

SEGMENT 20 – APPEALS

No Amendments in this segment

SEGMENT 21 – ADVANCE RULING



No Amendments in this segment

SEGMENT 22 – ETHICS AND OTHER PROVISIONS

GST implications on online gaming including online money gaming (W.e.f. 1.10.23):

Sec	Reference	Amendment/Newly added provision
Sec. 7(2) read with Sch. III of CGST Act, 2017	Actionable claims excluded from supply	<ul style="list-style-type: none">Actionable claims, other than specified actionable claims, are excluded from supply.²²Specified actionable claims are covered under supply.As per Sec. 2(102A), Specified actionable claims are:<ul style="list-style-type: none">H – Horse racingC – CasinosB – BettingL – LotteryO – Online gaming incl. online money gamingG – GamblingAs per Sec. 2(80A), "online gaming" means offering of a game on the internet or an electronic network and includes online money gaming;

²² Finance Act, 2023 amendment

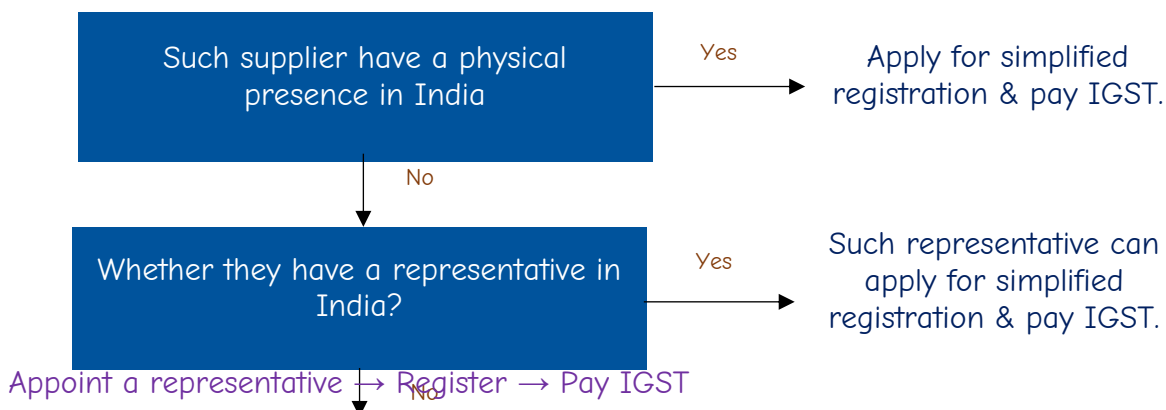
		 <ul style="list-style-type: none"> As per Sec. 2(80B), "online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, <u>whether or not its outcome or performance is based on skill, chance or both</u> and whether the same is permissible or otherwise under any other law for the time being in force. 
<p>Sec. 2(52) of CGST Act, 2017</p>	<p>Covered under Goods</p>	<p>Specified actionable claims are <u>treated as goods</u>, as the meaning of goods included actionable claims.</p> <p>(Applicable rate of GST on specified actionable claims is 28%)</p>
<p>Sec. 5(1) of IGST Act, 2017</p>	<p>Charging section under IGST Act</p>	<p>With effect from 01.10.2023, the CG has notified <u>the supply of online money gaming as the goods on import of which integrated tax shall be levied and collected</u> and not in accordance with the provisions of the Customs Tariff Act, 1975²³.</p>
<p>Sec. 2(17) of IGST Act, 2017</p>	<p>OIDAR services includes online gaming but excluded online money gaming</p>	<ul style="list-style-type: none"> OIDAR services includes online gaming OIDAR services excludes online money gaming Therefore, the provisions of OIDAR services is not applicable to online money gaming
<p>Sec. 14 of IGST Act, 2017</p>	<p>Liability to pay IGST on import of online gaming services</p>	<ul style="list-style-type: none"> As OIDAR includes online gaming, therefore, on import of online gaming services by NTOR (i.e., Any unregistered person or registered only to deduct TDS), liability to pay GST is on supplier under FCM. Either supplier or the intermediary located outside India shall pay. However, on import of online gaming services by other than NTOR, liability to pay GST is on recipient under RCM
<p>Sec. 14A of IGST</p>	<p>Liability to pay IGST on import of online</p>	<ul style="list-style-type: none"> On import of online money gaming services by any person, liability to pay GST is on supplier located outside India.

²³ Notification No. 03/2023- IT dt. 29.09.2023

Act, 2017	gaming services ²⁴	<ul style="list-style-type: none"> Such supplier should obtain a simplified registration in India, if they have any physical presence in India. If they do not have a physical presence, but have a representative in India, such representative shall register If they neither have physical presence in India nor they have a representative in India, then they shall appoint a representative in India and such representative shall register and pay GST. <p>Note: If such supplier is not complying with the provisions, their information, website or app shall be liable to be blocked for access.</p>
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SEC 14A: LIABILITY TO PAY IGST ON IMPORT OF ONLINE GAMING

Liability to pay GST is on supplier located outside India on import of online money gaming by any person in India.



Note: If Such supplier is not complying with the provisions, their information (or) website or application shall be liable to be blocked for access.

15(5) of CGST Act, 2017	case of specified actionable claims ²⁵	section (4) of section 15: a) supply of online money gaming; b) supply of online gaming, other than online money gaming; and c) supply of actionable claims in casinos. Value shall be determined as prescribed.
Rule 31B of CGST Rules, 2017	Value of supply in case of Online Gaming including online money gaming	The total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player. Further, any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.
Rule 31C of CGST	Value of supply of actionable claims in case of Casino	The total amount paid or payable by or on behalf of the player for- (i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or

²⁴ Inserted Vide GST (Amendment) Act, 2023 w.e.f 1.10.23

²⁵ Notification No. 49/2023-CTdt. 29.09.2023

Rules, 2017		<p>(ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.</p> <p>Further, any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.</p> <p>For the purpose of above rules 31B and 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, <u>which is used for playing by the said player in a further event without withdrawing</u>, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.</p>
Rule 46 of CGST Rules, 2017	Tax invoice in case of online money gaming	tax invoice issued by the registered person to an unregistered person shall contain name of the State of the recipient and the same shall be deemed to be the address on record of the recipient.
Sec. 12(2) of CGST Act, 2017 read with Noti No. 66/2017	Time of supply in case of specified actionable claims ²⁶	<p>TOS is earlier of the following:</p> <ol style="list-style-type: none"> Due date of invoice (or) Actual date of invoice (or) Date of payment received. <p>Note: GST payable on advances in case of specified actionable claims</p>
Sec. 25 of CGST Act	Procedure for registration ²⁷	<p><u>Simplified registration Scheme for overseas supplier of online money gaming [FORM GST REG 10]:</u></p> <p>The Central Government has notified the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers empowered to grant registration in case of supply of online money gaming provided or agreed to be provided <u>by a person located in non- taxable territory and received by a person in India.</u></p>
Rule 87 of CGST Rules, 2017	Deposit in Electronic cash ledger ²⁸	A person supplying online money gaming from a place outside India to a person in India as referred to in section 14A of the IGST Act, 2017 may make the deposit in electronic cash ledger through international money transfer through Society for Worldwide Inter-bank Financial Telecommunication payment network, from the date to be notified by the Board.
Sec. 39 of CGST Act, 2017	Return to be furnished	<p><u>Online gaming or online money gaming supplier located outside India liable to pay GST:</u></p> <p>GSTR – 5A by 20th of the month following every month</p> <p><u>Others:</u> Normal returns (GSTR-1/GSTR-3B) needs to be field.</p>

²⁶ Notification No. 50/2023- CT dt. 29.09.2023

²⁷ Notification No. 04/2023- IT dt. 29.09.2023

²⁸ Notification No. 51/2023 – CT dt. 29.09.2023

AMENDMENTS IN INDIRECT TAX LAWS

SEGMENT 23 – TAXABLE EVENT UNDER CUSTOMS

No Amendments in this segment

SEGMENT 24 – EXEMPTIONS UNDER CUSTOMS

No Amendments in this segment

SEGMENT 25 – CLASSIFICATION AND TYPES OF CUSTOMS DUTIES

No Amendments in this segment

SEGMENT 26 – VALUATION UNDER CUSTOMS

No Amendments in this segment

SEGMENT 27 – PROCEDURES UNDER CUSTOMS

Provisions of Electronic cash ledger and electronic duty credit regulations are applicable from 20th January 2024 - Notification No.88/2023-Customs (Dt: 29th Nov 2023)

Deferred Payment of Import duty Rules, 2016 amended Earlier, Deferred Payment of Import Duty Rules, 2016 provided due dates for deferred payment of import duty as under:-

S. No.	Goods corresponding to Bill of Entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1.	1st day to 15th day of any month	16th day of that month
2.	16th day till the last day of any month other than March	1st day of the following month
3.	16th day till the 31st day of March,	31st March

The said rules have been amended to further provide that where the Central Government considers it necessary and expedient, it may, under exceptional circumstances, and for reasons to be recorded in writing, allow payment to be made on a different due date.

Deferred payment not to apply in certain cases:

If there is default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full. The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the entry.

The same has been amended to further provide that the eligible importer shall be permitted to make the deferred payment if he has—

- (i) paid the duty for a bill of entry within due date and
- (ii) paid the differential duty for the same bill of entry along with the interest on account of reassessment within one day (excluding holidays).

[Notification No.58/2023-Cus (N.T.) dated 03.08.2023]

SEGMENT 28 – BAGGAGE PROVISIONS

No Amendments in this segment

SEGMENT 29 – STORES UNDER CUSTOMS

No Amendments in this segment

AMENDMENTS IN INDIRECT TAX LAWS

SEGMENT 30 – WAREHOUSING UNDER CUSTOMS

No Amendments in this segment

SEGMENT 31 – REFUND OF CUSTOMS DUTY

No Amendments in this segment

SEGMENT 32 – FOREIGN TRADE POLICY

No Amendments in this segment