

Tax Bulletin

Update publication for our clients

April, 2019



Vijaywargi Khabiya & Saoji

Chartered Accountants

FOREWORD

As we move ahead of FY 2018-2019, a quick recap of the past year would indicate that while on the one hand the Indian Government introduced various assessee friendly measures (GST rate reductions, extension of Audit deadlines, increasing tax thresholds, introducing trade facilitation norms, to name a few), on the other hand the tax administration grew stringent with increased instances of demand confirmations and penalty infliction.

Suffice it to say that the year has been a mixed bag for tax payers which kept all stake holders – industry, administration and professionals on high alert!

Following suit, the month of March saw issuance of various Notifications/ schemes as well as aggressive recovery and adjudication mechanism by the Tax department. In addition, the GST Council presented a major relief to the residential Real Estate Sector.

Accordingly, we have compiled the **11th Edition of the Tax bulletin** in relation to Direct Tax (i.e. Income Tax) and Indirect Tax (i.e. GST, Customs law and FTP).

Warm Regards,

Team VK&S

CONTENTS – UPDATE ON



- 1 Income Tax
- 2 Goods & Services Tax ['GST']
- 3 Customs
- 4 Foreign Trade Policy ['FTP']



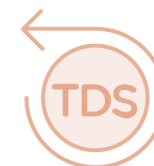
Income Tax updates

- Changes effective April 1, 2019
- Legal Snippets

Changes Effective from 1st April 2019



- ❖ **Enhanced Standard Deduction Limit:** Standard Deduction for salaried employee has been increased from Rs 40,000 to Rs 50,000
- ❖ **Dilution in concept of deemed to be let out property:** Considering the difficulties faced by middle class tax payers, now assessee has option to choose any two houses as self occupied as against one as provided earlier. Accordingly, tax payer will not be taxed for notional rent for second house.
- ❖ **Increase in TDS threshold limit for interest from Bank:** The threshold limit for deduction of tax at source from Bank has been increased from Rs 10000 to Rs 40000. It would do away with hassle of claiming refund or giving form 15G for non taxable individual
- ❖ **Enhanced Tax Rebate:** Earlier there was rebate available for individuals earning annual income upto Rs 3.5 lacs. The said limit has not been enhanced to Rs 5 lacs.



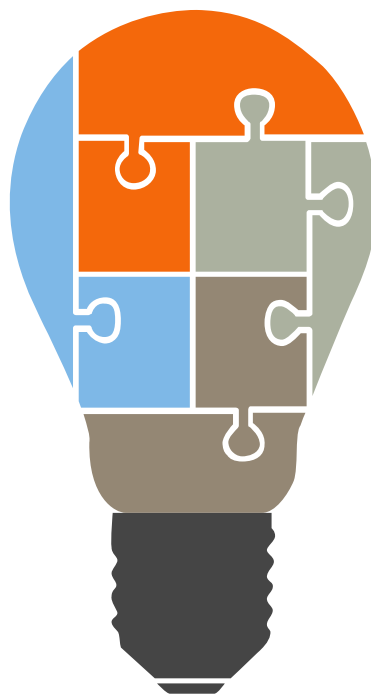
Important
Changes to be
kept in mind

Legal Snippets

TDS – Bank service charges

No Deduction of TDS required on amount paid to Bank/Credit Card Agency on service charges

[The CIT-TDS 1 Mumbai Vs Cleartrip Pvt Ltd 2019-TIOL_717-HC-MUM-IT]



Disallowance for excess interest?

If the assessee has paid higher interest @18% per annum to its related and unrelated parties both then no disallowance for excess interest charged is warranted

[Rushil Industries Limited Vs ACIT Circle 1 Bhavnagar, 2019-TIOL-719-ITAT-AHM]



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GST updates

- Notifications and Circulars
- Legal Snippets
- GST Advance Rulings

Return due dates & increased thresholds under GST



GSTR-3B

Month	Due Date
April 2019	20 th May 2019
May 2019	20 th June 2019
June 2019	20 th July 2019

GSTR-1

Turnover < 1.5 Crore

For April – June 2019 to be furnished by **31st July 2019**

Turnover > 1.5 Crore

Month	Due Date
April 2019	11 th May 2019
May 2019	11 th June 2019
June 2019	11 th July 2019

FORM ITC-04: Job-work details

For July 2017 to March 2019 – to be furnished by **30th June 2019**

Exemption from GST Registration:
Turnover < Rs. 40 Lakh

Person engaged in **exclusive supply of goods** with aggregate turnover < Rs. 40 Lakh is exempt from obtaining Registration under GST

Effective
April 1,
2019

Turnover limit for Composition scheme increased to 1.5 Crore

Eligible Registered person may opt for Composition Scheme

GST on Real Estate Sector – Housing

Tax Rates

NEW!

Rate – 1.5% (ITC not available) applicable for:

- Affordable housing properties;
- ongoing projects presently eligible for concessional GST rate of 12%.

Rate – 7.5% (ITC not available) applicable:

- Residential properties outside affordable segment in new projects and ongoing projects;
- Commercial apartments in residential real estate with commercial carpet area < 15%

Valuation: 2/3rd of total consideration (Construction service cost + Land cost)

Effective rates (with land cost) : 1% and 5%

- **Old rates** available only to ongoing project i.e. where construction and booking started before April 1, 2019
- Option to continue with old rate to be exercised by **10th May 2019**

Conditions for reduced rate

- 80% of inputs (including cement) and input services (other than TDR/JDA, etc) to be purchased from registered persons ('RD')
- **Shortfall in RD purchases to attract GST @ 18% under RCM**
- In any case, cement purchased from URD to attract GST under RCM @ 28%
- Capital Goods purchased from URD also to attract GST under RCM at applicable rate

Transitional ITC for ongoing projects

- Transitional ITC on pro-rata basis in proportion to booking invoicing and completion of construction will be available;
- In future ITC would be proportionately allowed only to the extent of tax paid at full rate on commercial apartment not eligible for benefit;

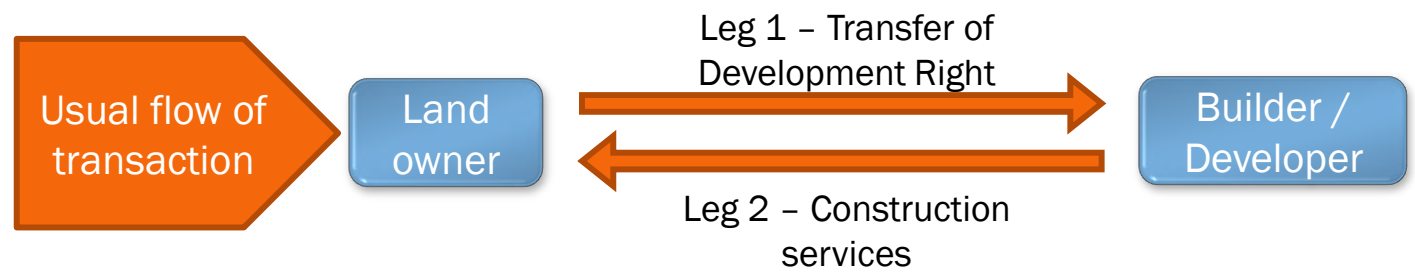
No bar in law to increase the basic prices to compensate for loss of ITC

Comments

Deeming land value as 1/3rd not feasible
- land value may range from 50% - 85%



GST on Real Estate Sector – Development rights & long term lease



Leg 1 - Transfer of Development Right ('TDR') /FSI

Exempt: Supply of TDR, FSI, long term lease (premium) of land by landowner to a developer shall be exempted if constructed properties sold before issuance of completion certificate

Taxable: If properties are sold after issuance of completion certificate.

- GST to be paid under RCM by developer/builder
- Rate : 1% (affordable housing) or 5% (other residential)
- Date of issue of completion certificate is date on which builder is liable to pay GST

Leg 2 - Construction services provided by builder

- GST to be charged by builder under forward charge
- Rate: 1% or 5%
- GST to be paid on the date of completion
- *Value of construction service = Amount charged for similar apartment from the earliest independent buyer less land value*
- The landowner can take ITC

Formula for GST valuation of TDR prescribed



Long term lease for development

Upfront amount (called as premium, salami, cost, price, development charges or by any other name) to be **exempt**

- Service by way granting of long term lease of > 30 years (on or after 01.04.2019)
- For construction of residential apartments by a promoter in a project, intended for sale before occupation certificate

Composition scheme for service providers

Composition
Scheme for
supplier of service



- **Who can opt?**
Registered service provider with aggregate turnover of Rs. 50 Lakh in financial year may opt for this scheme
- **Rate of Tax = 6%**
- **When is reduced rate applicable?**
Applicable to first supply of services/goods up to Rs. 50 Lakh made after April 1
- **Other key modalities:**
 - Intimation for availing this option to be filed in GST CMP-02 latest by April 30, 2019
 - Tax is not be collected from customer
 - ITC not to be availed by supplier
 - Bill of supply with prescribed declaration to be issued
 - Option once exercised will be applicable for all places of business registered under the PAN in any State
- **Transitional credit**
Any person opting to pay under this scheme shall pay an amount by debit to electronic credit/cash ledger, equal to ITC on inputs held in semi finished/finished stock and capital goods.
- **Who cannot opt for this scheme?**
 - Person eligible to apply for composition scheme applicable to manufacturers
 - Person making inter-state supply
 - Casual taxable person

Effective
April 1,
2019

Clarification - treatment of Sales Promotion Schemes and e-trading of PSLC

	Type of sales promotion	Treatment under GST	Availability of ITC
1	Free Samples and Gifts	Goods or services supplied free of cost shall not be treated as 'supply' under GST (other than free supplies between related/ distinct persons)	ITC will not be available
2	Buy one get one free offer	<ul style="list-style-type: none"> Treated as supplying two goods for the price of one. Taxability will depend whether it is mixed or composite supply 	ITC will be available
3	Discounts including 'Buy more save more' offers	<ul style="list-style-type: none"> If discounts are established in terms of agreement entered into before or during time of supply, then discount value shall be excluded from value of supply <i>provided provisions under Section 15(3) of the CGST Act are satisfied</i> 	ITC will be available
4	Secondary Discounts	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) of the CGST Act are not satisfied.	ITC will be available



E-trading of Priority Sector Lending Certificates (PSLC)

Supply of PSLC traded over e-Kuber portal of RBI for both periods i.e 01.07.2017 to 27.05.2018 and from 28.05.2018 onwards will attract IGST



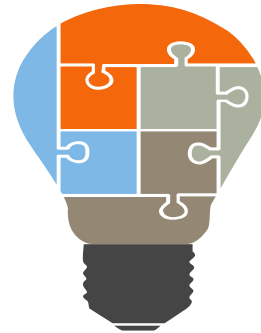
Amendments / Clarifications

ITC related clarifications /changes

- CGST Rules amended with provisions of **new order of utilisation of ITC**.
- As per new provisions (implemented from 1.2.2019) ITC of IGST must be 1st exhausted in all cases

Mechanism for transfer of ITC in case of **death of sole proprietor** prescribed

- **In case of demerger**, ITC to be apportioned in the ratio of value of assets in new unit for purpose of transfer of unutilized ITC;
- Value of assets to mean the entire value of assets, whether or not ITC has been availed
- **Disclosure of ITC in GSTR-3B**
- Common credit attributable to taxable & non-taxable supplies to be declared/ reversed (where applicable) in FORM GSTR-3B or FORM GST DRC-03;
- Details of ITC taken or not taken to be declared at summary level in FORM GSTR-3B



Refund related clarification

- For refund of unutilized/accumulated credit on specified fabrics
- For refund by merchant exporter receiving reduced rate supplies
- Cases where deficiency memo was issued and fresh application not accepted by portal

Verification for grant of new registration

- Where registration of a person has been cancelled due to non compliance, such person should apply for revocation or cancellation of registration and not for fresh registration.
- However, some persons have opted for fresh registration in such cases.
- Authorities have been advised to be vigilant and run an PAN check to see if such persons already hold registration in the State and accordingly scrutinized the applications

Other amendments

Corrigendum: GST on income tax TCS



- Earlier, in December 2018, a circular was issued stating that Income Tax TCS is to be included for GST valuation
- The said clarification has been changed since it was a wrong position
- *Vide* corrigendum, it has been clarified that Income Tax TCS would not be includible for GST valuation as it is an interim levy on the 'income' and not a tax on goods



Notices and Order for demand

- For all notices, statements, assessment orders, adjudication orders, or rectification of orders, a summary thereof shall also be served electronically in form DRC-01 or DRC-02 or DRC-07 or DRC-08
- News forms DRC-01,02,07 & 08 substituted

New Functionality on GST Portal

- Facility to file Annual Return by is now available
- Facility for applying for revocation of suo-moto cancellation of registration by persons registered as OIDAR /TDS /TCS/NRTP has been enabled.
- Taxpayers have facility to:
 - access report on tax liability as declared in GSTR- 1 and as declared & paid GSTR 3B.
 - access information regarding ITC claimed in GSTR 3B and as accrued in Form GSTR 2A
 - view the RCM liability declared & paid in GSTR 3B and as appearing in GSTR 2A

All three types of new return formats – Normal, Sahaj and Sugam Returns released on GST portal to enable various stakeholders in adapting their systems with new formats
New formats to be mandated from July 2019 onwards

New return
formats!

GST Legal Snippets – From the High Courts

Input Tax Credit based on fake Invoices

Bharat Raj Punj Vs Commissioner of CGST [Kerala High Court]

Facts: Petitioners had fraudulently availed ITC by issuance of fictitious sale invoices. Further sister concern of the company also fraudulently availed input tax credit. It was contended that tax is to be first determined under section 73 & 74 of Act.

Issue: Whether department has the right to directly issue summons or proceed with arrest if specific offence under Section 132 is made out?

Ruling – Since offence is committed under Section 132 of the Act, determination of tax is not required and the Department can proceed straight away by issuing summons or if reasonable grounds are available by arresting the offender.

Constitution of Appellate Tribunal

Torque Pharmaceuticals Pvt Ltd Vs UOI [Lucknow High Court]

Issue: Whether litigant can be left without a remedy for reasons that the Government is unable to provide forums.

Ruling – A litigant cannot be left without a remedy for reasons that the Government is unable to provide forums. Directions given to both the Centre and the State Governments to file better affidavits giving a cut off date by which they propose to set up the Tribunal

GST Appellate Tribunal notified in January
2019

GST – Advance Rulings



As per Section 97(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), an applicant desirous of obtaining an advance ruling may make an application to the Authority for Advance Ruling ('AAR')

The broad objective for setting up a mechanism of Advance Ruling is to provide certainty in tax liability in advance, in relation to an activity proposed to be undertaken by the applicant and reduce litigation. Under GST, advance ruling can be obtained for a proposed transaction as well as a transaction already undertaken by the applicant

It may be clarified that an Advance ruling is binding only on the applicant who has sought the advance ruling and on the concerned officer or the jurisdictional officer in respect of the applicant

However, the Rulings help us to ascertain the mind-set and interpretation that may be adopted by the Department. Accordingly, we have discussed a few Advance rulings issued in the past months in the subsequent slides

Advance Ruling - Taxability

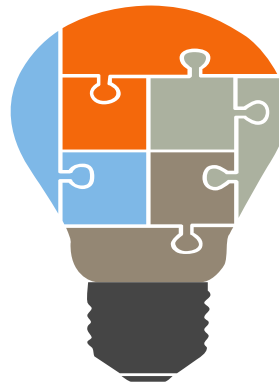
Dream Runners Foundation Ltd [Tamil Nadu AAR]

Issue: Whether conduct of **marathon events by the charitable Trust** through which donations are raised for charity is an exempted service?

Ruling –

- Applicant is conducting Marathon and the receipts of the event are utilized for conduct of the event and the balance left is donated.
- The money collected from the participants is consideration towards the supply of service of organizing and conducting the marathon.
- **It is not an exempt supply** as only those activities which fall under the definition of charitable activities as per clause 2(r) of Notification 12/2017 are exempt.

Charitable organizations conducting such events need to be vigilant!



Kara Property Ventures LLP [Tamil Nadu AAR]

Issue: What is the implication of GST on supply of **construction services when two separate agreements are entered:** one for sale of undivided land from builder to buyer and other for construction.

Ruling –

- Applicant (builder) is selling to the buyer a portion of undivided share of land which can never be partitioned and demanded.
- The Sale deed will be executed only after construction of building is completed.
- This transaction can't be said as sale of land.
- GST to be levied on 2/3rd of the total value charged for construction service and amount charged for transfer of undivided share of land.

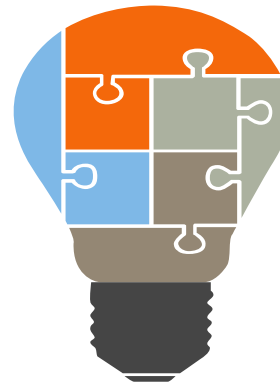
Advance Ruling – Discount & Sales Promotion

M/s MRF Ltd. [Tamil Nadu AAR]

Issue: In case of **post purchase discount** given by the supplier where GST liability is not reduced, whether recipient (applicant) can avail the ITC of full GST charged on the supply or **reversal proportionate to discount** is required?

Ruling –

- As per Section 16, if recipient fails to pay to supplier the value of supply within 180 days, then ITC is to be reversed.
- In case of post-supply discount, recipient can avail ITC only to the extent of amount actually paid i.e. invoice value less discount.
- Thus, reversal of ITC proportionate to discount is required.



Biostadt India Limited [Maharashtra AAR]

Issue: Whether **ITC** is available on procurement of **Gold coins distributed** at the end of the sales incentive?

Ruling –

- As per section 17(5) of CGST Act, no ITC on any goods can be availed, if they are given as 'gifts'.
- Thus ITC was held to be not available on gifts when no GST is being paid on their disposal.

The words 'disposed off' appearing before the term 'gift' in Section 17(5) have not been discussed

This appears to be a detrimental position for the recipients of discount!

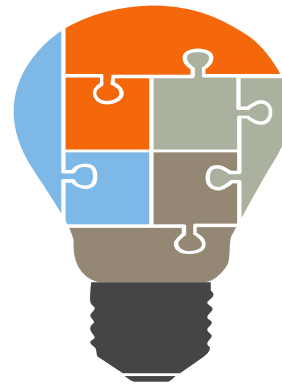
Advance Ruling – Input Tax Credit

YYK India Pvt Ltd [Haryana AAR]

Issue: Whether ITC is available of GST charged by contractor for hiring of buses/cars for transportation of employees.

Ruling –

- Words ‘Hiring’ and ‘Renting’ are synonymous.
- The services of the contractor for hiring of buses/cars for transportation of employees qualify as “rent a cab” service.
- ITC is blocked under section 17(5).



Nipha Exports Pvt Ltd West Bengal AAR]

Issue: Whether ITC is admissible of ambulance purchased in November 2018. The provisioning of ambulance services to the employee is obligatory under Factory Act.

Ruling –

- Eligibility for claiming ITC is subject to the provision of law at the time of occurrence of the taxable event irrespective of when the claim is made.
- Thus benefit of proviso which allows availability of ITC of services, which is obligatory for an employer to provide to employee is not available, since it was introduced by amendment in Feb 2019.
- ITC is not available as per section 17(5).



Custom updates

- Notifications and Circulars

Customs – Tariff Notifications

Notification No.	Implications
7/2019	Grants tariff concession in respect of goods under tariff sub-heading 4809 90 imported from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement (CEPA).
8/2019	The Notification seeks to extend the exemption from Integrated Tax and Compensation Cess upto 31.03.2020 on goods imported against AA/EPCG authorizations.
9/2019	Extends exemption from IGST and Compensation Cess to Export Oriented Units (EOUs) on imports till 31.03.2020.
10/2019	This amendment notification seeks to extend deeper tariff concessions to imports of specified goods from Japan under India-Japan CEPA (IJCEPA) with effect from 1 st April, 2019
11/2019	Postpones the implementation of increased customs duty on specified imports originating from USA from 1 st April, 2019 to 2 nd May, 2019.



Customs – Non-tariff Notifications

Effect to the amendment made in India-Singapore CECA

Rules made *vide* Notification No.20/2019-Cus(NT) to be called the Customs Tariff Determination of Origin of Goods under Comprehensive Economic Cooperation Agreement between the Republic of India and Republic of Singapore (Amendment) Rules, 2019



New formats of 'Form SB I'- Shipping Bill for Export of Goods and 'Form III'-Bill for Export for Goods

Proviso in Notification No.63/94-Cus.(NT) appointing Golakganj, Assam as a Land Customs Station omitted *vide* Notification No.19/2019-Cus.(NT)

Land Customs Station

'Dera Baba Nanak', Punjab appointed as Land Customs Station for purpose of clearance of baggage.

Customs – Anti Dumping Notifications

Anti-dumping Notifications

13/2019	Prescribes Provisional Assessment for “Saturated Fatty Alcohols” when originating in or exported from Indonesia, Malaysia, Thailand and Saudi Arabia by M/s. PT. Energi Sejahtera Mas (producer) Indonesia through M/s. Sinarmas Cespa Pte Ltd (exporter/trader) Singapore and imported into India.
14/2019	Imposes anti-dumping duty on “Acetone” originating in or exported from European Union, Singapore, South Africa and United States of America.
15/2019	Imposes definitive anti-dumping duty on “Ethylene Vinyl Acetate (EVA) sheet for Solar Module” originating in or exported from China PR, Malaysia, Saudi Arabia and Thailand.



Customs – Circular

Scheme for Rebate of State and Central Taxes and Levies on export of garments and made-ups (RoSCTL)

- The New Scheme has come into effect from 07.03.2019.
- Notified by Ministry of Textiles vide notification No. 14/26/2016-IT (Vol II) dated 7.3.2019
- Old scheme for garments and made-ups has been discontinued w.e.f. 07.03.2019.

Benefits to exporters shall be given by DGFT in form of MEIS type duty credit scrip.

Claims filed under existing scheme codes for erstwhile RoSL scheme will be treated as claims filed under RoSCTL scheme during transition period.

Claims under erstwhile RoSL scheme to be processed for shipping bills with Let Export Order (LEO) date upto 06.03.2019 only.



4

FTP updates

- Notifications, Public Notices,
- Circulars & Trade Notices.

FTP Trade Notices and Circulars

Subject	Implications
Online MEIS applications in respect of SEZ shipping bills	<ul style="list-style-type: none"> • For “Ease of doing business” new online system for MEIS applications in respect to SEZ Shipping bills will be available from 08.04.2019. • This system will allow for online filling, processing and system based approval of MEIS. • Earlier, SEZ Regional Authority (RLA) used to verify the application & then approve the MEIS application.
Discontinuation of physical copy of Advance /EPCG Authorisation - Procurement from SEZs.	<ul style="list-style-type: none"> • In case of procurement from SEZs, Telegraphic Release Advise (TRA) facility shall be operated by Regional Authority ('RA') . • “Certificate of supplies from SEZ” may be issued by the RA on request of authorisation holder. • This certificate will allow procurements from SEZ units and will be issued in quadruplicate to :- <ol style="list-style-type: none"> 1. Authorisation holder; 2. SEZ Supplier Unit; 3. Designated officer at SEZ and 4. Relevant customs authorities.
EPCG Scheme - Applicability of amendment to para 5.10 (c) of Hand Book of Procedures 2015-20 (Mid-Terms Review)	<p>Para 5.10 (c) of HBP 2015-20 incorporates the following point:</p> <p><i>“Proceeds realized through normal banking channel from third party exporter’s account to the authorisation holder’s account on account of such exports only shall be counted towards fulfillment of export obligation”</i></p> <p>It is clarified that the above amendment shall be applicable to third party exports made on or after 05.12.2017 towards Export Obligation</p>



FTP Notification and Public Notices

Subject	Implications
Extension of Integrated Goods and Service Tax (IGST) and Compensation Cess exemption under Advance Authorisation, EPCG and EOU scheme upto 31.03.2020.	Exemption of Integrated Tax and Compensation Cess is further extended up to 31.03.2020 for the following schemes. <ol style="list-style-type: none"> 1. Advance Authorization 2. EPCG Authorization & 3. EOU scheme
Onetime condonation under the EPCG Scheme – Extension till 30.09.2019.	Onetime condonation under the EPCG Scheme is further extended up to 30.09.2019. Request for condonation can be made to respective Regional Authority (RA) with the additional payment of composition fees of Rs. 5000/- for the following provisions: <ol style="list-style-type: none"> 1. Block wise extension in Export Obligation; 2. Extension of Export Obligation period and 3. Extension for submission of installation certificate beyond the date of submission(i.e. 18 months from the date of import)



About VK&S



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Contact us



ANY QUESTIONS?

VIJAYWARGI KHABIYA & SAOJI
CHARTERED ACCOUNTANTS

3rd Floor, MG House,
Rabindranath Tagore Road,
Nagpur-440001
Maharashtra India

Phone: 0712 2522020

info@cavks.in

www.cavks.com



Annexure A – Compliance for FY 2019-2020

Particulars	Details of compliance to be done
Invoice and other document series	<ul style="list-style-type: none"> • Start new series of consecutive serial number of tax invoice; • You may have different invoice series for different type of supply. • However, invoice serial number should not be more than 16 digits including special characters. • Different series to be maintained of Debit Note/ Credit Note having GST Impact and Other financial Debit Note/ Credit Note. • Different series to be maintained of Delivery Challan for Job Work and Delivery Challan for other movement.
Place of Supply	It needs to be ensured that, tax invoice shall contain details of Place of Supply along with name of state in case of inter – state supply. Recently CBIC has clarified that, if same is not there, then penal action will be taken.
Disclosure of GSTIN	Put your GST Certificate and GSTIN number at prominent place/ name board of each place of business.
ITC for F.Y. 17-18	Last date for filing availing any pending ITC for F.Y. 17-18 is due date of filing GSTR- 3B of March 19. If any ITC is pending, kindly take it/ inform us.
ITC for F.Y. 18-19	Last date for filing availing any pending ITC for F.Y. 18-19 is due date of Sep19 Return. If any ITC is pending, kindly take it/ inform us.
Correction in Sales for F.Y. 18-19	Last date for making any correction in any sales reported in GSTR 1 of F.Y. 17-18 is due date of filing GSTR – 1 of March 19.
Correction in Sales for F.Y. 18-19	Last date for making any correction in any sales reported in GSTR 1 of F.Y. 18-19 is due date of filing GSTR – 1 of September 19.
LUT	Ensure that you have applied LUT for F.Y. 19-20 for undertaking duty free export.
Creditor Outstanding for more than 180 days	As per Section 16 of CGST Act 2017, payment for supplies received has to be made within a maximum period of 180 days, otherwise ITC is required to be reversed along with interest at 18%. Kindly ensure compliance of the same as on March 2019.
RCM Invoice	Kindly ensure to prepare RCM invoice for all RCM Credits.