

Tax Bulletin

Update publication for our clients

January, 2019



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FOREWORD

As we enter the first month of 2019, team VK&S takes this opportunity to wish you a very Happy New Year! We hope to continue providing quality service and nurture our relationship with timely delivery of our advice.

The new year has already started with a big bang in the GST arena with plethora of new notifications, amendments and circulars. With reduction in GST rates for certain goods/ services, to waiver of late fee for non-filers, to pushing the GST Annual Return and Audit to June 2019, the Government has endeavored to end 2018 on a high note.

Accordingly, we have compiled the **8th 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

This update Bulletin includes Notifications/ Circulars issued up to January 1, 2019

CONTENTS – UPDATE ON



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

1

Income Tax updates

- TDS on Rent paid by Individuals/HUF
- Recent Updates at a Glance
- Legal Snippets

TDS on Rent Paid by Individuals/HUF




- ❖ Section 194IB inserted w.e.f June 1, 2017 makes TDS provisions applicable to individuals/HUF for high value rentals. It is applicable to all individuals/HUF irrespective of their nature of income i.e. Salary / Business / Capital Gain / Interest Income etc.
- ❖ Summarised provisions are as follows.

Particulars	Remarks
Who are liable to deduct?	Individuals or HUF who are not required to get their books audited u/s 44AB
When the liability arises?	Rent paid for the month or part of the month is more than Rs 50,000/- per month
What is Tax Rate for TDS?	<ul style="list-style-type: none"> • If the Landlord furnishes PAN : 5%. • If the Landlord does not furnish PAN : 20%
Due Date for Payment of TDS	TDS has to be paid within 30 days from the last day of the month for which TDS is deducted
Whether TAN is required?	No, TDS needs to be deposited by filing challan cum return Form 26QC as per the due date mentioned above

Recent Updates at a Glance



- ❖ **Father's name non mandatory in PAN application form** : In case of mother is a single parent, option is given to mention mother's name instead of Father's name. [Notification No. 82/2018]
- ❖ **Mandatory PAN Application for certain Entities** : Entities (Other than individual) who has entered into financial transaction of Rs 2.50 lacs or more need to apply for PAN mandatorily. [Notification No. 82/2018]
- ❖ **Aadhar PAN Linking Deadline extended to 31st March 2019.**
- ❖ **No TDS on Interest to Senior Citizen for Income Upto Rs 50 Thousand** [Notification No. 6/2018]
- ❖ **Non Applicability of Section 56(2)(vii) on receipt of shares as a result of fresh issuance of shares** [Circular No. 10/2018 dated 31 December, 2018]
 - ❖ Said section provides for taxation of income where a company / firm receives shares for inadequate or no consideration
 - ❖ It has been clarified that such provisions will not be applicable when shares are received as issuance of fresh capital by company

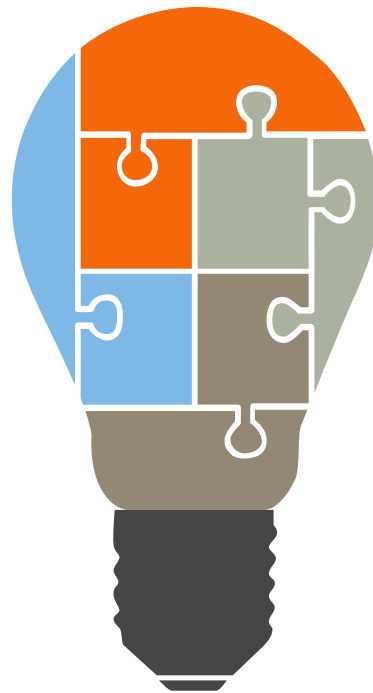


These are small but very useful updates

Legal Snippets

Provisions of Section 56(2)(vii) of the Act can not be invoked with respect to buy back of own shares. Shares of any other company fall under the present case.

[Vora Financial Services Private Limited vs ACIT 2018-171-ITD-646 Mumbai-Trib]



Disallowance U/s 40(a)(ia) not justified for freight charges paid but not claimed as expenses.

[CIT Vs Shree Chaudhary Transport (2016) Rajasthan High Court]



2

GST updates

- Notifications and Circulars
- Orders
- GST Advance Rulings
- Legal Snippets

Waiver of late fee and extension of timeline

Late Fees

- **Late fee is waived** for all taxpayers who failed to timely furnish **GSTR-1, GSTR-3B and GSTR-4** for July 2017 to September 2018
- *Waiver is subject to the condition that said returns are furnished between December 22, 2018 to March 31, 2019*

Delayed GSTR-3B for October 2018 onwards will continue to attract late fee @ Rs. 25 per day (For nil return – Rs. 10 per day)

ITC - 04

- ITC-04 is the quarterly declaration to be filed in relation to goods sent and received from a job-worker
- For the period July 2017 to December 2018, due date extended till **March 31, 2019**;
- Reporting in ITC -04 will now exclude any challan issued with regard to goods supplied between two job workers.

Due date for Annual Return and Audit extended

ITC of invoices related to FY 2017-2018 available up to April 20, 2019

- Input Tax Credit for invoices / debit notes relating to invoices issued in FY 2017-2018 can be taken in GSTR-3B up to March 2019
- Supplier should also upload details of outward supply

To be furnished by June 30, 2019

Extension of timeline for filing return by Electronic Commerce Operator

GSTR-8 for the months of October to December, 2018 to be filed by January 31, 2019

GST Rate – Goods – New Exemptions

5% to Nil Rated :

- **Vegetables**, (uncooked or cooked by steaming or boiling in water), frozen, branded and put in a unit container;
- Vegetable provisionally preserved (for example by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption.

Supply of gift items received by the President, Prime Minister, Governor or Chief Minister of any State or Union territory or any public servant, by way of public auction by the Government, where auction proceeds are to be used for public or charitable cause attract **Nil GST Rate**.

Music Books
(12% to Nil Rated)

New rates
applicable w.e.f.
01.01.2019

Supply of gold by Nominated Agency to exporter under the scheme for “ Export Against Supply by Nominated Agency” **exempt from GST** subject to following condition:

- Nominated Agency and exporter shall follow conditions and procedure specified in Foreign trade policy;
- Exporter shall export jewellery within 90 days and provide copy of shipping bill or bill of export along with invoice for export to Nominated agency within 120 days;
- If proof are not produced within time limit, then Nominated agency shall pay GST with interest.

GST Rate Reduction – Goods

Revised Rate of 18%

28% to 18% :

- Flywheels, pulleys, transmission shafts, cranks, gear boxes, speed changer, torque converters;
- Monitors and TVs of upto screen size of 32 inches;
- Re-treaded or used pneumatic tyres of rubber, solid or cushion tyres, tyre treads and tyre flaps of rubber;
- Lithium-ion accumulators including lithium - ion power bank;
- Digital cameras and video camera recorders ;
- Video game consoles and machines, articles of funfair, table or parlour games including pintables, billiards, special table for casino games, etc.

Revised Rate of 5%

- Parts and accessories for the carriages for disabled persons (28% to 5%)
- Marble and travertine, crude or roughly trimmed (18% to 5%)
- 12% to 5% :
 - Natural cork, raw or simply prepared;
 - Walking Stick including seat sticks;
 - Fly ash Blocks

New rates
applicable w.e.f.
01.01.2019

Flexible Intermediate Bulk Container to attract uniform GST Rate of **12%**.
Earlier applicable rate was 5%/12% (depending on the value)

Revised Rate of 12%

18% to 12% :

- Cork roughly squared or debarked in blocks, plates, strip
- Articles of natural cork;
- Agglomerated cork and articles of agglomerated cork

- Footwear of **sale value** not exceeding Rs. 1000 per pair attract GST Rate of **5%**. (Earlier value printed on footwear had to be less than Rs. 1000 to attract 5% GST)
- Other Footwear attracts GST @ **18%**

GST Rate – Services

New rates
applicable w.e.f.
01.01.2019

Amendment and clarification issued to confirm that **food and accommodation services provided by Educational Institutes to students, staff and faculty are exempt**

New Exemptions

Sector	Rate Changes
Cinema	<ul style="list-style-type: none"> Tickets above Rs. 100 - Reduced from 28% to 18%; Tickets upto Rs. 100 - Reduced from 18% to 12%.
Insurance Services	Service of third party insurance of goods carriage - Reduced from 18% to 12%
Air Travel	Air travel of pilgrims by non-scheduled/charter operations, for religious pilgrimage facilitated by the Government of India under bilateral arrangements - 5% with ITC of input services
Goods Leasing	Leasing or renting of goods to attract Same rate as applicable on supply of like goods involving transfer of title in goods
GTA	Services provided by GTA to Government, Government departments, Local Authority or Governmental agencies which have taken registration only for purpose of deducting TDS and not for a making a taxable supply of goods or services - Exempted
Government	Services provided by Central or State or Union Territories Government by way of guaranteeing loans taken from banks to their undertakings or PSUs - Exempted
Banking Services	Services supplied by banks to Basic Saving Bank Deposit account holders under Pradhan Mantri Jan Dhan Yojana - Exempted
Rehabilitation Services	Services provided by rehabilitation professionals at medical establishments, educational institutions, rehabilitation centers registered as charitable trust established by Government - Exempted

Payment of GST on Reverse Charge Mechanism

NEW!

Security Services – Registered person to pay under RCM

Services provided by way of supply of security personnel provided by any person other than a body corporate

RCM will not be applicable on security services provided to :

- Government, Government departments, Local Authority or Governmental agencies which have taken registration only for purpose of deducting TDS and not for a making a taxable supply of goods or services
- Composition dealer

Banking Company to pay under RCM

Services provided by business facilitator to a banking company located in the taxable territory

Business Correspondent to pay under RCM

Services provided by an agent of business correspondent to a business correspondent

Clarification: Parliament and State legislatures

Parliament and State legislature will have same tax treatment with regard to payment under RCM as applicable to Central and State Government .

GST on Renewable Energy Plants

GST Rate of Goods

Following renewable energy devices & parts for their manufacture attract **GST @ 5%**

1. Bio-gas plant
2. Solar power based devices
3. Solar power generating system
4. Wind mills, Wind Operated Electricity Generator
5. Waste to energy plants/devices
6. Solar lantern/solar lamp
7. Ocean waves/tidal waves energy devices/plants
8. Photo voltaic cells, whether or not assembled in modules or made up into panels

Clarification issued

- Reduced rate of 5% applicable only to goods falling under Chapter 84, 85 and 94 and used in the initial setting up of plants and devices
- Entry does not cover goods of other chapters
- Taxpayer needs to satisfy himself with the requisite document from the buyer that goods are purchased for renewable energy plant



GST Rate of Service

Construction / engineering/ installation or other technical services, provided in relation of setting up of following attract **GST @ 18%**

- (a) Bio-gas plant
- (b) Solar power based devices
- (c) Solar power generating system
- (d) Wind mills, Wind Operated Electricity Generator
- (e) Waste to energy plants / devices
- (f) Ocean waves/tidal waves energy devices/plants

New entry

When goods attracting GST @ 5% are supplied with services and other goods, valuation to be done as under

- 70% of Gross Value – Deemed supply of goods attracting GST@ 5%;
- 30% of Gross Value – Deemed supply of service attracting GST @ 18%.

Valuation



Other amendments

Exclusion from GST TDS

Proviso inserted to exclude applicability of GST TDS provisions on supply of goods or services among following persons;

- Department / establishment of Central or State Government
- Local Authority;
- Governmental Agencies;
- Authority / board / any other body, - (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with 51% or more participation by way of equity or control, to carry out any function;
- Society established by the Central or State Government or a Local Authority under the Societies Registration Act, 1860;
- Public sector undertakings



Principal Commissioner/
Commissioner of Central Tax
and their subordinate officers
empowered as SCN issuing
authority for entire territorial
jurisdiction of Principal Chief
Commissioner or Chief
Commissioner



Explanation inserted to clarify that GST rate of 12% covers only domestic multi-modal transport.

Updates for newly migrated taxpayers

- Persons who did not file the complete FORM GST REG 26 but received only a Provisional Identification Number ('PID) by December 31, 2017, may now apply for GSTIN with prescribed details on or before the January 31, 2019 (earlier application could be made up to August 31, 2018)
- On fulfilment of specified procedure, such person are required to furnish details on or before February 28, 2019 (earlier this date was September 30, 2018)



For the newly migrated persons (as per above procedure) timeline for submission of GST Returns have been prescribed as under:

Return	Period	Due Date
GSTR-1 for persons with aggregate turnover > 1.5 Cr	July, 2017- February, 2019	March 31, 2019
GSTR-1 for persons with aggregate turnover < 1.5Cr	Quarters from July, 2017- December, 2018	
GST- 3B	July, 2017- February, 2019	

Amendment in IGST Rules – Place of Supply

Gist of new IGST Rules

- Provisions added to determine Place of Supply in case where services are supplied in multiple States **and**
- No separate contract or agreement is executed for determination of value of services in each State or Union Territory ('UT')



Services related to immovable property / boat / vessel located in more than one State / UT

Nature of Services	Manner of determination of supply of services made in each State / UT
Service by way of lodging accommodation by hotel etc. (other than single property) and ancillary services eg: Hotel chain offering stay package in 2 States	In proportion to the number of nights stayed in each property
<ul style="list-style-type: none"> - Services relating to immovable property (Site preparation, architect, surveyor, experts of real estate) - Accommodation in immovable property for organizing functions; - Service by way of accommodation in hotel, etc. where single property is located in two states; - Ancillary services 	In proportion to the area of the immovable property lying in each State or UT
Service by way of lodging/ accommodation by house boat or vessel and ancillary services	In proportion to the time spent by boat / vessel in each State as declared by Service provider



Event held in more than one State / UT

- Service supplied to an unregistered person**
- by way of organization of events;
 - in relation to conference, fair or similar event;
 - Ancillary services;
 - Assignment of sponsorship of such events;

Proportion of supply in each State to be determined by application of generally accepted accounting principles.

Applicable where Location of supplier and recipient, both is in India or one of them is outside India.

Amendment in IGST Rules – Place of Supply... contd.

3

Leased circuit installed in more than one state / UT

Proportion of supply in each State to be determined In proportion to number of points lying in the State or UT

Number of points in a leased circuit is determined in following manner:

- Circuit between two points or places, the starting point and end point will constitute two points;
- Circuit in intermediate point or place will also constitute point provided benefit is derived from that point

4


Services supplied in more than one State/ UT
Location of the supplier or the location of recipient is outside India

- Services supplied in respect of goods which are made physically available by recipient
- Services supplied to an individual in physical presence


Nature of Services	Manner of determination of supply of services made in each State or UT
Services performed on same goods in multiple States/UT	Equally divide the value of services in each State or UT
Services supplied on different goods on which service is performed	Ratio of invoice value of goods in each State or UT will be considered as ratio of value of service
Services performed on individuals in multiple States/UT (eg. Make up of an Actor in Delhi and Goa)	By application of generally accepted accounting principles

Rules applicable only where no separate contract or agreement is executed for determination of value of services in each State /UT

Amendment to CGST Rules



Signature or digital signature not required in case of electronic document issued in accordance with the provisions of the **Information Technology Act, 2000**



Relevant period for Refund under inverted duty structure has been defined to mean the period for which the claim has been filed.



Apart from export manifest and export report, **departure manifest to be accepted as document** required for completion of application for refund of IGST paid on the goods exported out of India



Audit by tax authorities **allowed even for the part of the financial year.**

Revision order passed by Revisional Authority

- The Revisional Authority shall give a notice in FORM GST RVN-01 and reasonable opportunity of being heard to a person whose order is being revised and likely to affect him adversely;
- The Revisional Authority shall issue a summary of the order in FORM GST APL - 04 clearly indicating the demand amount.
- FORM GST RVN - 01 and FORM GST APL -04 are notified.

Amendment to CGST Rules

GST Registration as TCS deductor

A person applying for GST registration as TCS deductor in a State where there is no physical presence to mention name of such State in Part – A of the Form and name of State or Union Territory, where principal place of business is located in Part – B.



Amendment in E-Way Bill Provision

- Furnishing of information in PART A in FORM GST EWB-01 **will not be allowed if** :
 - Composition dealer has not furnished its return for **two consecutive tax periods**;
 - Any person other than composition dealer has not furnished its returns for **two consecutive months**.
- The commissioner may on sufficient cause being shown, allow furnishing of such information in PART A of FORM GST EWB-01;
- A reasonable opportunity of being heard shall be given to such person before rejecting request for furnishing the required information.

NEW!

This provision will be made applicable from a later date

Provision appears to be detrimental since non-filers will not be able to generate E-way bill and supply goods

Clarifications – Refund

Physical
Submission
not required



- All documents/undertaking/statements/invoices to be uploaded on the common portal
- Taxpayer will have the option to submit manual application
- Taxpayer who is unallocated to Central or State tax Authority to submit physical application
- ARN will be generated after uploading all documents
- Acknowledgement or Deficiency memo to be issued within 15 days from ARN – This will be issued manually for the time being
- Rectified application, which is to be treated as a fresh refund application, to be submitted manually in the office of the jurisdictional proper officer
- Pending applications as on December 31, 2018 which are made online will require physical submission

Sanction
Orders to be
issued in 45
Days



- Interest @ 6% will be calculated after the expiry of 60 days from the date of receipt of application till the date amount is credited to the bank account of the claimant.
- Tax authorities advised to issue final sanction orders (GST RFD-06) **within 45 days** of the date of generation of ARN, so that the disbursement is completed within 60 days

Clarifications – Refund... contd.

Inverted Duty Structure

- *Refund of unutilized ITC in case of inverted tax structure, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability*
- Such refund is available even in case the inputs are taxed at multiple rates, one of which is higher than the rate applicable on the outward supply
- *Refund of ITC attributable to input services and Capital Goods is not available*

Inputs include spares, packing material etc.

- Stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items qualify as 'inputs' and ITC is available provided:
 - such inputs are used or intended to be used for the purposes of business
 - Inputs are used for effecting taxable supplies, including zero-rated supplies
 - the ITC for such inputs is not restricted under section 17(5) of the CGST Act
- *Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods*
- Circular notes that there is no specific restriction on the availment of such ITC anywhere else in the GST Act.

'Availed' ITC to be considered for Refund

- ITC can be said to have been "availed" when it is entered into the electronic credit ledger
- Currently, this happens when monthly return in FORM GSTR-3B is filed
- *ITC of invoices issued in earlier tax period "availed" in subsequent period cannot be excluded from the calculation of refund amount for the subsequent period*



Clarifications – Refund of Compensation Cess

Refund of ITC of Compensation Cess for an exporter

- Vide Circular issued in May 2018, it was clarified that refund of accumulated ITC of Compensation Cess ('Cess') on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess.
 - *Refund on account of compensation cess for period up to May 2018 is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of CGST/SGST/UTGST/IGST was claimed on account of exports made under LUT/Bond*
- Procedure for grant of refund prescribed
- Availment of ITC is subject to provisions of Section 17(5)

Refund cannot be denied since coal is used for intermediate product

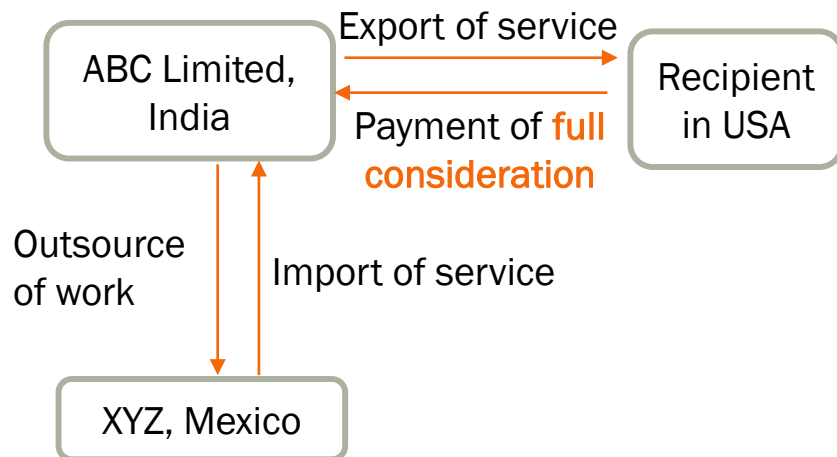
- No distinction between intermediate goods or services and final goods or services under GST.
 - *Since coal is an input used in the production of aluminium, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, ITC in relation to the same cannot be denied*

Reversed ITC cannot form part of refund of unutilized ITC

- ITC which is reversed and booked as 'cost' cannot be held to have been 'availed' in the relevant period.
- It cannot be part of refund of unutilized ITC on account of zero-rated supplies.

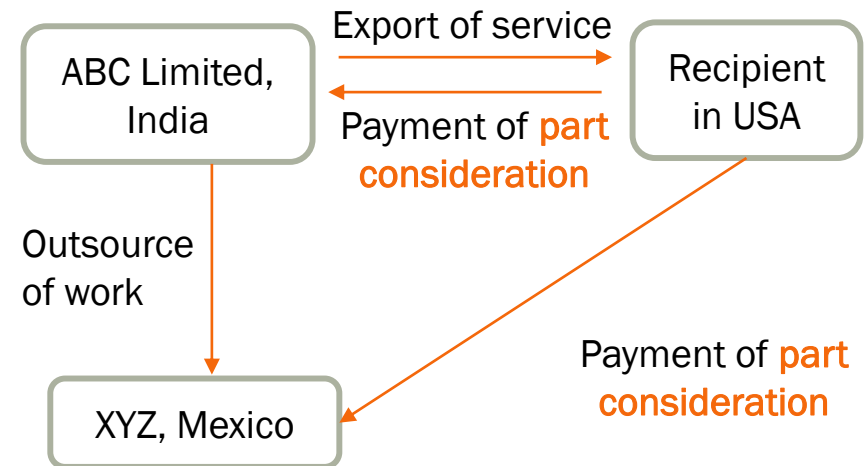
Clarification – Export of Service

Scenario I



- ABC Limited to be exporter of entire value where invoice for entire value raised
- ABC Limited to pay IGST under Reverse Charge for import of service from XYZ Mexico

Scenario II



- Only part payment received by ABC India, even then 100% of total contract value may be considered for export if:
 - ABC Limited pays IGST under Reverse Charge for services provided directly from XYZ Mexico to USA
 - RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India.

XYZ Mexico should not be a mere establishment of ABC Limited India.

Clarifications – Applicable GST Rates

Rigs, tools & Spares moving inter-state for provision of service

GST not applicable on inter-state movement of machinery like tower cranes, rigs, batching plants, concrete pumps and mixers if:

- Inter-state movement of goods for provision of service on own account
- No transfer of title in such goods or
- No transfer of goods to the distinct person by way of stock transfer
- movement is not intended for further supply of such goods

Rate on Sprinklers

- “sprinklers”, covers sprinkler irrigation system
- sprinkler system consisting of nozzles, lateral and other components would attract GST @12%

GST on printing of pictures

- *Service of printing of pictures attracts GST @ 18%*
- “Printing and reproduction services of recorded media, on a fee or contract basis” attracting GST @ 12% does not include said service

GST on IIM programs (w.e.f. January 31, 2018)

- *All long duration programs (one year or more) – Exempt from GST*
- Short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law - *Not exempt from GST*



Clarifications – Rates & Classification of Goods

Goods	Clarification
Chhatua or Sattu	HSN 1106 – GST @ Nil (unbranded) or 5% if branded
Fish meal and other raw materials used for making cattle /poultry/aquatic Feed	HSN 2301 – GST @ 5% – “inputs for animal feed are different from the animal feed”
Animal Feed Supplements/ feed additives from drugs	Guideline prescribed for determining classification between 2309 and 2936 - to be decided on case to case basis
Liquefied Petroleum Gas for Domestic Use	LPG supplied in bulk, whether by a refiner/fractionator to an Oil Marketing Company or by one OMC to another for bottling and further supply for domestic use will attract GST @ 5%, with effect from 25.1.2018
Polypropylene Woven and Non-Woven Bags and PP Woven and NonWoven Bags laminated with BOPP	HSN 3923 - GST @ 18% (Non-laminated woven bags would be classified as per their constituting materials)
Wood logs for pulping	HSN 4403 – GST @ 18%
Bagasse based laminated particle board	GST @ 12%
Embroidered fabric sold in three pieces cloth for lady suits	GST @ 5%
Turbo Charger for railways	HSN 8414 – GST @18% (Classification doesn't change due to use by Railways)

Clarifications - Miscellaneous

1 Sale of used vehicle, old goods by Government

- **What?** Sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap
- **By who?** Central Government, State Government, Union territory or a local authority
- **To registered person** – Taxable under RCM
- **To unregistered person** – Taxable under forward charge

2 Penalty for delay in filing of GSTR-3B

- Late filing of GSTR-3B not to attract penalty under Section 73 which involves issuance of SCN
- General penalty under Section 125 may be imposed

3 Revision of price in GST regime

- Debit or credit note pertaining to pre-GST contract issued in the GST regime due to price revision (as per Section 142 of the CGST Act)
 - pre-GST rates will not be applicable
- Tax to be charged as per GST rate

4 Applicability of GST TDS provisions

- TDS provisions are applicable only to such authority / board / any other body set up by an Act or established by any Government in which **51% or more participation by way of equity or control is with the Government.**
- Other entities which can deduct TDS – PSU and specific registered societies

Clarifications – Miscellaneous

5

Owner of Goods for Section 129

- Section 129 provides for release of seized goods/ vehicle on payment of tax and penalty in case where the 'owner of goods' comes forward for making payment and in case he doesn't.
- In this regard, it has been clarified as under:
 - Consignment accompanied by Invoice/ other document - **Consignor/ consignee to be considered as 'owner of goods'**
 - Consignment not accompanied by document - **proper officer to determine who should be declared as the owner of the goods.**

6

Income tax TCS and GST valuation

- Taxable value for the purposes of GST to include the TCS amount collected under the provisions of the Income Tax Act
- This is because the value to be paid by the buyer/ recipient is inclusive of the said TCS

Effective date of withdrawal:

- Date indicated in application FORM GST CMP-04 filed for withdrawal.
- Such date needs to be of the same Financial Year in which application was made

Effective date of denial of composition scheme in case of contravention

- Date to be determined by the authorities but should not be prior to date of contravention
- Tax under normal scheme to be paid from the date of order
- For recovery of dues from date of contravention to date of order, SCN to be issued

Composition
Scheme

Clarifications – Others

GST on Asian Development Bank (ADB) and International Finance Corporation (IFC)

- *Services provided by IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act.*
- The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.

Seva Bhoj Yojna

- Central Sector Scheme for financial assistance under 'Seva Bhoj Yojna' of the Ministry of Culture notified
- Reimbursement of Central tax available for purchase of raw food items such as ghee, edible oil, sugar, etc.
- Applicable to charitable / religious institutions distributing free food such as Gurudwara, temple, mosque, church, etc.
- Unique Identity Number to be obtained – Procedure prescribed

GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company

- *Value of services by BF/BC to a banking company –* Banking company is the service provider in the BF/ BC model operated as per RBI guidelines. The banking company is liable to pay GST on the entire value of service
- *Scope of services by BF/BC to a banking company with respect to accounts in rural areas:* For the purpose of availing exemption from GST following conditions flowing from the notification should be satisfied:
 - the services provided by a BF/BC to a banking company in their respective individual capacities should fall under the Heading 9971
 - such services should be with respect to accounts in a branch located in the rural area*Procedure for classification of branch of a bank as located in rural area and the services which can be provided by BF/BC, is governed by the RBI guidelines.*

FAQs on Tax Collected at Source



Electronic Commerce Operator are not required to collect TCS on supply of services being made by unregistered suppliers through their portal.



The registration of ECO for TCS would be required in each States / UT. ECO may declare the head office as its place of business for obtaining registration in States / UT where it does not have physical presence



Foreign ECO has to appoint agent on their behalf where they don't have physical presence in India and if registered supplier is supplying goods or services through them in India.



ECO who have not obtained registration in October 2018, but have collected TCS for October 2018 may furnish the details of TCS in the first return in Form GSTR-8.

Updates/Clarification for Real Estate Sector, Banking Sector and TDS Provision

GST on sale of complex, building, flat

GST is not levied on sale of complex/building and ready to move – in flats where sale takes place after issuance of completion of certificate by competent authority.

GST on special housing scheme.

Housing projects in the affordable segment such as Jawaharlal Nehru National Urban Renewal Mission, Rajiv Awas Yojana, Pradhan Mantri Awas Yojana or any other housing scheme of State Government etc., attract GST of 8%. In most cases in such schemes will not be required to pay GST in cash as they would have enough ITC

GST on other project

The cost of the complex/ building / flats have not gone up due to implementation of GST for the projects other than affordable segment. Builders are also required to pass on the benefit of lower tax burden to the buyer by way of reduced price.

FAQ on Banking Sector

Settlement obligation/margin trading facilities are in nature of extending loans or advances, therefore GST is not leviable on :

- Interest charged for debit for settlement obligation/margin trading facility
- Delay payment charges charged for delay in payment of brokerage.

Standard operating procedure on TDS

TDS deduction made on or after 1st October, 2018 but before the date of registration may be included in the first return to be furnished after obtaining registration.

GST Legal Snippets – From the High Courts

Incidence of tax is on supply and not on the nature of transport

Kun Motor Co Pvt Ltd Vs ASTO [Kerala HC]

Issue: Petitioner filed writ petition against penalty order, issued for detention of personal car as E-way bill was not filed.

Ruling: Incidence of tax is on the supply and not on the nature of transport. The detention was illegal - Notice issued and order passed being illegal and without jurisdiction, same is quashed and appeal is allowed.

GST is leviable on supply of Goods and Services to Duty free shops

Vasu Clothing Pvt Ltd Vs UoI [MP HC]

Issue: Petitioner seeks grant of relief from payment of GST by way of exemption on supply of goods and services to duty free shop ('DFS')

Ruling: Petitioner is not exporting the goods or taking goods out of India. Petitioner is liable to pay GST on supply of indigenous goods to DFS. The court do not have power to enact a statute. Court can only interpret statute and does not have power to legislate. The question of granting exemption in absence of any statutory provision to the petitioner does not arise.

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Satisfaction to be recorded before passing order of attachment of Assets

Patran Steel Rolling Mill Vs Assitant Commissioner of State Tax [AHM HC]

Issue: Petitioner filed writ petition claiming that attachment of bank accounts had crippled the day to day activities and impeding upon its ability to pay tax

Ruling: Commissioner must record written reasons before attaching any property or bank accounts or taking any such drastic action. Commissioner recorded no such satisfaction, thus attachment order is unsustainable. Revenue must balance interest of revenue and assessee. Power under section 83 of CGST Act must be exercised after due application of mind.



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

Ruling of Authority for Advance Ruling

M/s Bindu Ventures (Karnataka)

Issue: Which date is to be considered as date of completion of property, whether GST is leviable if part consideration is received before date of completion, whether GST is leviable, if entire consideration is received after date of completion

Ruling – Applicant is engaged in construction of commercial complexes. The date of occupancy certificate issued by Bruhat Bengaluru Mahanagara Palike (Corporation of Bengaluru city) shall be treated as date of completion of construction. If consideration is received before date of completion, then it would be treated as supply of service and will attract levy of GST. If consideration is after date of completion then it will not attract levy of GST.

Swapna Printing Works Pvt Ltd (West Bengal)

Issue: Whether order procured from foreign party to print religious texts and further delivery to various places in India will be classified as supply of service or supply of goods. Whether such activity can be classified as export

Ruling: Applicant is engaged in business of printing. The right of the content of the printed matter does not lie with applicant. The applicant is providing a composite supply wherein the supply of printing a content is principal supply and the physical inputs such as paper, ink, binding material are ancillary to the principal supply. Thus it is supply of services. The activity does not classify as export since recipient is located in India.




Ruling of Appellate Authority and Authority for Advance Ruling



RITES LTD
(Authority, West Bengal)

The construction of private railway siding for carriage of coal and oil fuel to Raghunathpur Thermal Power Station will be classified as composite supply of works contract pertaining to railway, Thus GST Rate applicable is 12%.



PEW Engineering
(Authority, West Bengal)

The retro-fittment of Twin Pipe Air Brake Systems on wagons for Indian Railway would be treated as composite supply, where supply of Twin Pipe Air Brake Systems would be treated as principal supply.

COLUMBIA ASIA HOSPITALS PVT LTD
(Appellate Authority, Karnataka)

Salary of employees of head office to be included in value of cross-charge to registrations in other States

3

Custom updates

- Notifications and Circulars

Customs – Non-tariff Notifications




All Industry Rates of Duty Drawback revised.

Notification No. 95/2018-Cus (NT) d.t 06.12.2018

New rates effective from 19.12.2018

Circular No. 52/2018 issued to highlight salient features of revised rates:

- Tariff item have to be suffixed 'B' / D
- *AIR of Duty Drawback increased for some products*
- Rationalization of rates for some products
- New tariff items included in various sectors viz. Chemicals, Textiles and made-up, Electrical and electronics including for common rail injector and cellular mobile phones
- Representations regarding rated were to be submitted latest by 31.12.2018.



Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver

Port Meadow notified for unloading of imported goods and loading of export goods or any class of goods.

Nhava Sheva-IV Commisisonerate notified as Audit Commissionerate

Customs – Tariff Notifications

Notification No.	Implications
79/2018	<p><i>Amends Notification No. 52/2003-Customs, dated 31.03.2003 which provides Exemption to goods procured by EOU/STP/EHTP units.</i> Key amendments include:</p> <ul style="list-style-type: none"> Imported goods could be temporarily cleared without payment of all Customs duties, IGST and Compensation Cess not paid at the time of their import. However, the applicability of GST on supply of such goods shall be independently governed by GST laws. A job worker would need registration under GST Act/Rules to enable the EOUs to export of GST goods directly from its premises. Procedure prescribed for payment of Duty on the imported goods such as when these are cleared from the EOU,

Provides a specific Annexure VII which specifies goods that may be re-imported, within 7 years from the date of exportation, for repair or reconditioning.

Circular issued for streamlining

EOU/EHTP/STP/BTP schemes are governed by Chapter 6 of Foreign Trade Policy (FTP), duly supported by the relevant Customs and Central Excise notifications. Notifications amended in order to align them with the present Foreign Trade Policy (FTP), 2015-2020, as well as to remove redundancies that had crept in over the time on account of changes/supersession of certain other notifications mentioned therein and legal developments such as the introduction of GST and exempting the EOUs from the application of the Customs warehousing provisions.

Customs – Tariff Notifications

Notification No.	Implications
80/2018	Seeks to further postpone the implementation of increased customs duty on specified imports originating in USA from 17th December, 2018 to 31st January, 2019.
81/2018	Seeks to partially mend notification No. 37/2017-Customs dated 30.06.2017 in order to exempt BCD and IGST for imports by National Technical Research Organisation upto January 1, 2022
82/2018	Amends Notification No. 46/2011-Customs dated 01.06.2011 so as to provide deeper tariff concessions in respect of specified goods when imported from ASEAN under the India-ASEAN Free Trade Agreement
83/2018	Amends Notification No. 152/2009-Customs dated 31.12.2009 so as to provide deeper tariff concessions in respect of specified goods imported from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement (CEPA)
84/2018	Amends Notification No. 53/2011-Customs dated 01st July, 2011 so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA)
85/2018	Provides deeper concessional rate of basic customs duty in respect of tariff item gear box and parts thereof, of specified motor vehicles, when imported under the India-Japan Comprehensive Economic Partnership Agreement (IJCEPA).
86/2018	Amends notification no. 296/76 dated 02.08.1976 to exempt temporary importation of private road vehicles from IGST and compensation cess.

With effect from 01.01.2019

Customs – Anti Dumping Notifications & Instruction

Anti-dumping Notification No.	Implications
56/2018	Seeks to levy definitive anti-dumping duty on the imports of "Uncoated Copier Paper" originating in or exported from Indonesia, Thailand and Singapore.
57/2018	Seeks to impose anti-dumping duty on imports of "Zeolite 4A (detergent grade)" originating in or exported from China PR

Customs Instruction

Applications received under Regulation 4 of Customs Brokers Licensing Regulations, 2018 to be forwarded to National Academy of Customs, Indirect Taxes and Narcotics, NACIN for conduct of online examination

Customs – Clarifications

AEO Online Application

AEO Applications to be made online on aeoinida.gov.in from December 1, 2018

Manual applications to be accepted up to March 31, 2019
Review intervals extended to 3 years by amending Master Circular

Electronic sealing for Customs Bonded warehouse deferred

Electronic Sealing-Deposit in and removal of goods of goods from Customs Bonded Warehouses under Circular 19/2018- Customs dated 18th June, 2018 further deferred

Procedure for disposal of un-claimed/un-cleared cargo under section 48 of the Customs Act, 1962, lying with the custodians prescribed

Procedure to be followed in case of manufacturing or other operations undertaken in bonded warehouses

Operations under Section 65 including the process of application, maintenance of records, manner of discharging duty **to be continued in public bonded warehouses up to January 31, 2019** who had such facility on the date of issuance of Circular No. 38/2018 i.e. 18.10.2018 (As per the Circular, operations were to be undertaken in private bonded warehouses)



Customs – TIR Carnet



Procedure for
movement of goods
under TIR Carnets
prescribed

- 'TIR' stands for **Transports Internationaux Routiers** (International Road Transport) and is an international harmonised system of Customs control
- It facilitates trade and transport while effectively protecting the revenue of each Country through which goods are carried.
- Applies to countries that have ratified the TIR Convention, while offering a high level of security
- Streamlines procedures at borders, reducing the administrative burden for customs authorities and for transport and logistics companies.
- It cuts border waiting times significantly, saving time and money.
- The movement of goods under the Convention is under the cover of a carnet (international customs document that permits tax-free and duty-free temporary admission of nonperishable goods into multiple countries) issued by the National Guaranteeing Association (NGA)
- The Federation of Indian Chambers of Commerce and Industry (FICCI) has been appointed by CBIC as the NGA for issuance of Carnets under the Convention in India.
- **TIR is being introduced in a phased manner in India. Specified Customs Stations in India are authorized for use of TIR.**
- **For the above purpose, authorization has to be accorded to –**
 - operators who can apply, obtain and use the TIR for movement of cargo;**
 - containers that would be deployed in TIR operations, conforming to the standards laid down in the convention**

4 FTP updates

- Notifications, Public Notices, Circulars & Trade Notices.

FTP Public Notices

Subject	Implications
Amendments in the Appendix 3B, Table 2 of the Merchandise Exports from India Scheme (MEIS)	<ol style="list-style-type: none"> The HS code 38123100 has been made eligible for MEIS for the exports made on or after 01.01.2017 and MEIS rate is 2% The HS code 15159010 & 15159040 has been made eligible for MEIS for the exports made on or after 01.01.2017 and MEIS rate is 5%. However, since both the HS Code are covered under Public Notice 62 dated 16.02.2018 item description mentioned in shipping should match with MEIS list. The HS code 50079000 is amended to 50079090. MEIS for HS Code 50079000 is only applicable for the exports made between 01.04.2015 to 31.12.2016. While, MEIS for HS Code 5079090 is applicable for the exports made on or after 01.01.2017. MEIS rate is 2%. The HS code 63049220 is amended to 63049229. MEIS for HS Code 63049220 is only applicable for the exports made from 01.04.2015 to 31.12.2016. While, MEIS for HS Code 63049220 is applicable for the exports made on or after 01.01.2017. MEIS rate is 2%. The rate of rewards under MEIS for Onions (Fresh or Chilled) under HS Code 07031010 has been increased to 10% from 5% for the exports made on or after 28.12.2018
List of capital goods permitted for import under the EPCG Scheme	<p>Following capital goods are allowed under EPCG Scheme.</p> <ol style="list-style-type: none"> Import of Pre-fabricated Polyurethane Foam (PUF) panels or doors for chilled rooms or cold storages; Furniture & fixtures, flooring material, furnishing materials for hospitals.
Extension of validity period for Advance Authorisation - reg.	Validity period for Advance Authorisation can be extended up to 1 year from the expiry date.



FTP Trade Notices

Subject	Implications
Facility to track status the MEIS dispatched through speed post.	<p>Vide Trade Notice No. 30/2018-19 dated 11.09.2018, DGFT had started the process of system driven approval of the MEIS application from 13.09.2018 in respect of exports made through EDI shipping bills.</p> <p>A new feature has been added for the exporter to track the MEIS speed post dispatch made by the DGFT.</p>
Documents required for online IEC applications	<p>Vide Trade Notice No. 23/2018-19 dated 08.08.2018 DGFT had notified the new procedure for online IEC application and mandated that online IEC application will require only 2 documents to be uploaded i.e.</p> <p>(i) Cancelled cheque [entity's name must be printed on it] OR Bank Certificate in ANF 2A (I) format and (ii) address proof of the applicant entity.</p> <p><i>List of documents which will be accepted as address proof are as under:-</i></p> <ol style="list-style-type: none"> 1. Aadhar Card OR (only in case of proprietorship) 2. Voter ID OR (only in case of proprietorship) 3. Passport OR (only in case of proprietorship) 4. Electricity / Telephone bill (Landline or Mobile) or 5. GST Registration Certificate OR 6. Sale / lease / rent deed.



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ANY QUESTIONS?

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