

SUPPLY UNDER GST

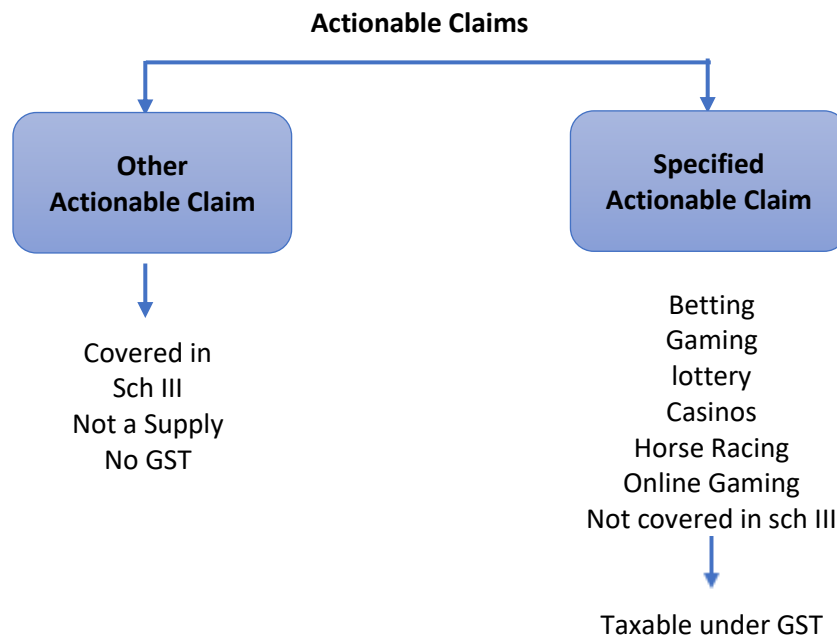
1. Casinos, horse racing and online gaming excluded from the purview of Schedule III and made taxable [Entry 6 of Schedule III amended]

1. Earlier “Actionable claims, other than **betting, gambling and lottery.**” Covered in Sch III
Now “Actionable claims, other than **specified actionable claims.**” Covered in Sch III
2. Further, the rate applicable on them is 28% and valuation would be prescribed under Valuation Rules.

3. Specified actionable claim means the actionable claim involved in or by way of —

- | | |
|----------------|--------------------------|
| i. Betting; | iv. Horse Racing; |
| ii. Casinos; | v. Lottery; or |
| iii. Gambling; | vi. Online Money Gaming; |

4.



5. **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, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.
6. **Online gaming** means offering of a game on the internet or an electronic network and includes online money gaming
7. **Virtual digital asset** shall have the same meaning as assigned to it in section 2(47A) of the Income-tax Act, 1961 [Section 2(117A)].

2. Definition of supplier amended [Section 2(105)]

1. The definition of supplier has been amended to incorporate a proviso which provides that

a person who organises or arranges, directly or indirectly, supply of **specified actionable claims**, including a person who owns, operates or manages digital/electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of CGST Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.

3. Supply of food and beverages at cinema halls taxable as restaurant service

1. The cinema operator:

(i) may run these refreshment / eating stalls / kiosks / counters / restaurants themselves

or

(ii) they may give it on contract to a third party.

2. The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services.

3. It is clarified that:

(i) supply of food or beverages in a cinema hall is **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.

4. (ii) 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, the **principal supply**.

4. Clarification on taxability of shares held in a subsidiary company by holding company

1. **Issue:** Whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' and whether the same will attract GST or not.

2. Clarification:

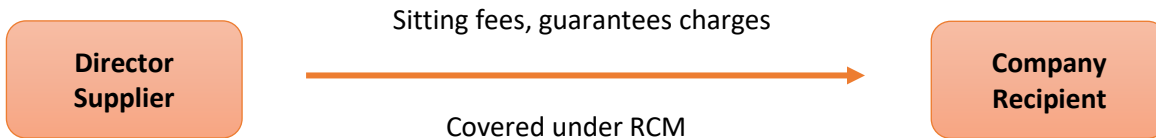
- a. It is clarified that securities are considered neither as G nor as S in terms of definition of goods under section 2(52) and the definition of services under section 2(102). Further, securities include 'shares' as per definition of securities.
- b. This implies that the securities held by the holding company in the subsidiary company are neither goods nor services.
- c. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a specific SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies
- d. 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.

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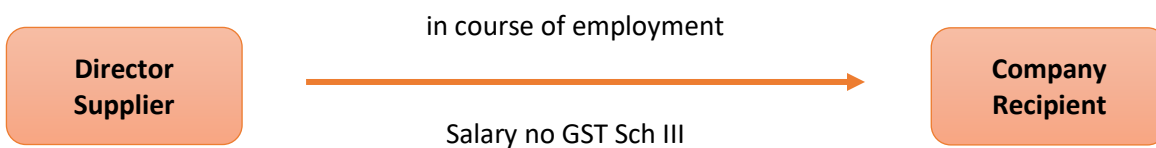
CHARGE OF GST

1. There is clarification on services by director to the company / body corporate

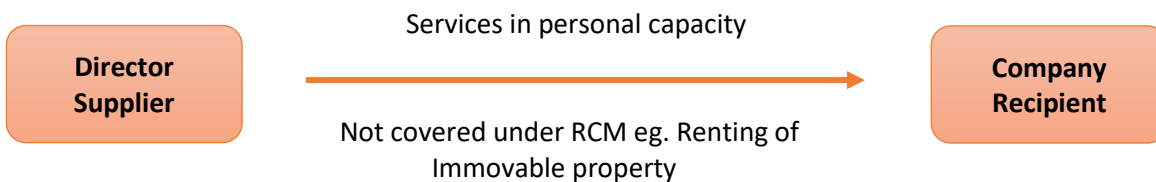
a. Services by director (other than salary) in the capacity of director to the body corporate is covered under RCM



Company liable to GST under RCM



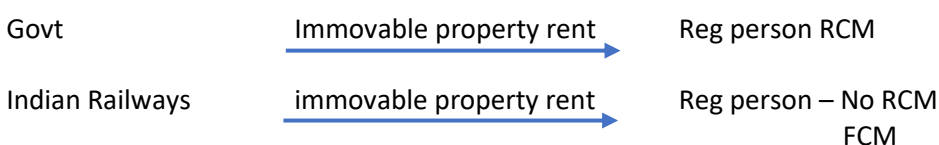
b. Now it is clarified that services provided by director in his personal capacity to the company will not be covered under RCM.



Director will pay GST under FCM

2. Amendments in services notified under RCM.

Sr. No.	Description of Service	Supplier	Recipient
5.	Services supplied by CG/SG/LA by way of services to business entity excluding- 1. renting of immovable property, 2. Services specified below- a. Services by the Department of Posts and ministry of railways b. Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; c. Transport of goods or passengers.	CG/ SG / UT / LA	Business entity in taxable territory
5A.	services by CG/SG/LA/UT by way of renting of immovable property to a registered person (excluding ministry of railways)	CG/ SG / UT / LA	Any registered person



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3. Tax payable by ECO u/s 9(5)

1. There are 4 notified services where the tax is payable by ECO

- 1) Services of transportation of passengers
- 2) Hotel accommodation
- 3) Housekeeping Service
- 4) Services of restaurant not provided from specified location

2. wef 20/10/23 there is an amendments in transportation services as follows

- a. Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motorcycle or any other motor vehicle except omnibus will be covered u/s 9(5)
- b. Services by way of transportation of passengers by an omnibus except where the person supplying such service through ECO is a company will be covered u/s 9(5)

Thus, with effect from 20.10.2023, the tax on services by way of transportation of passengers by an omnibus provided by a company through ECO is not payable by ECO. It will be payable by the company it self.

4. Composition Supplier

1. with effect from 01.10.2023, the composition suppliers permitted to make supply of goods through ECOs. Supply of services by composition suppliers through ECO is still not permitted.
2. Further, **with effect from 01.10.2023**, a special procedure has also been laid down under section 148 to be followed by ECO through which composition supplier supplies goods.
3. Following is special procedure in respect of supply of goods made through it by the composition suppliers, namely:
 - i. the ECO shall not allow any inter-State supply of goods through it by the said person;
 - ii. the ECO shall collect and pay TCS on supply of goods made through it
 - iii. the ECO 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.
 - iv. the ECO shall not allow any inter-State supply of G through it.
4. ECO should make necessary checks and validations on their systems / platforms

TAX INVOICE; CREDIT AND DEBIT NOTES

1. Threshold limit for e-invoicing reduced to ₹ 5 crore

1. E-invoicing has been made mandatory for all registered businesses with an aggregate turnover in any preceding financial year from 2017-18 **onwards greater than ₹ 5 crore.**

2. Applicability of e-invoicing to Government Departments/PSUs etc. registered solely for the purpose of deduction of tax at source as per provisions of section 51

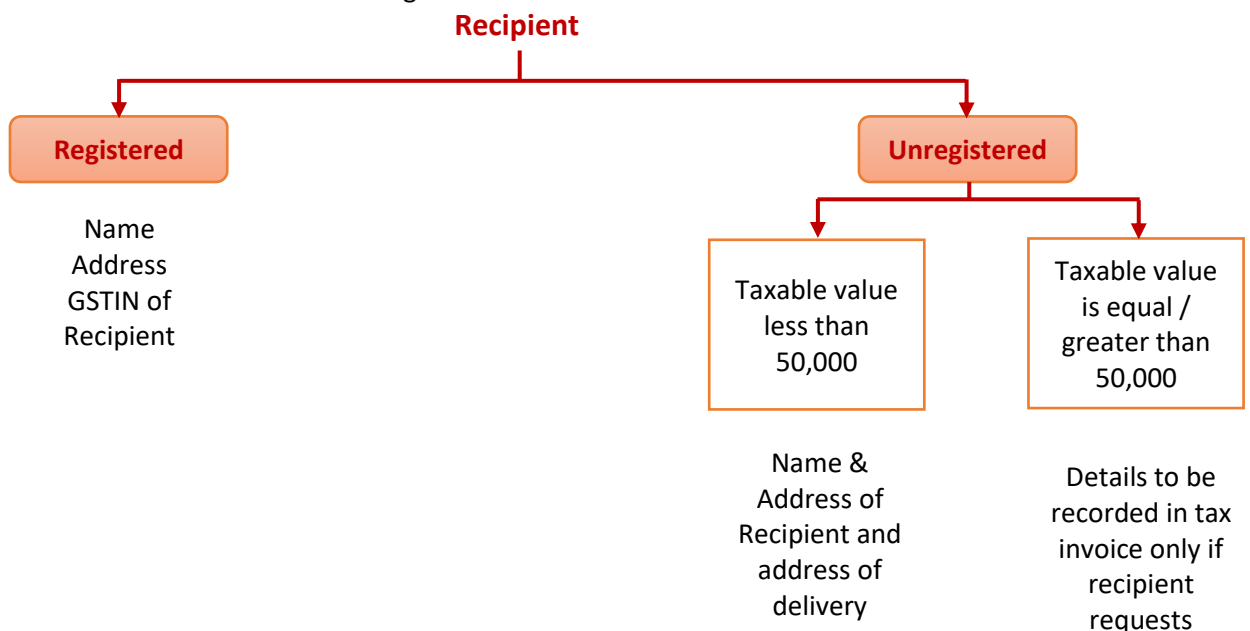


Question – Should the registered person issue an Invoice to such Govt dept PSU?

Ans : Yes. Registered person should issue an invoice in such cases. It is clarified that govt dept PSU registered for the purpose of TDS shall be treated as registered recipient.

3. In cases involving supply of online money gaming/service provided by/through ECO or by supplier of OIDAR services to unregistered recipient, tax invoice to contain the name of the State irrespective of value of supply [Rule 46 amended]

As per rule 46 tax invoice should contain following



Now In **cases involving supply of online money gaming** or in cases where any taxable service is supplied by or through an ECO or by a supplier of OIDAR services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the **name of the State of the recipient and the same shall be deemed to be the address on record of the recipient.**

VALUE OF SUPPLY

1. Supply of online money gaming, online gaming other than online money gaming and actionable claims in casinos notified under section 15(5)

1. **With effect from 01.10.2023**, supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos have been notified under section 15(5) for prescribing the manner of determination of the value of these supplies under the CGST Rules.
2. **With effect from 01.10.2023**, the method of determination of value of these actionable claims is prescribed by new rules 31B and 31C inserted as follows:
 - i. **Value of supply in case of online gaming including online money gaming [Rule 31B]**
Value of supply = 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:
 - ii. **Value of supply of actionable claims in case of casino [Rule 31C]**

The value of supply of actionable claims in casino shall be 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
- (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:

However, any amount returned/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.

Explanation.- For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

2. Tax to be paid on specified actionable claims at the time of receipt of payment for such supplies by the suppliers

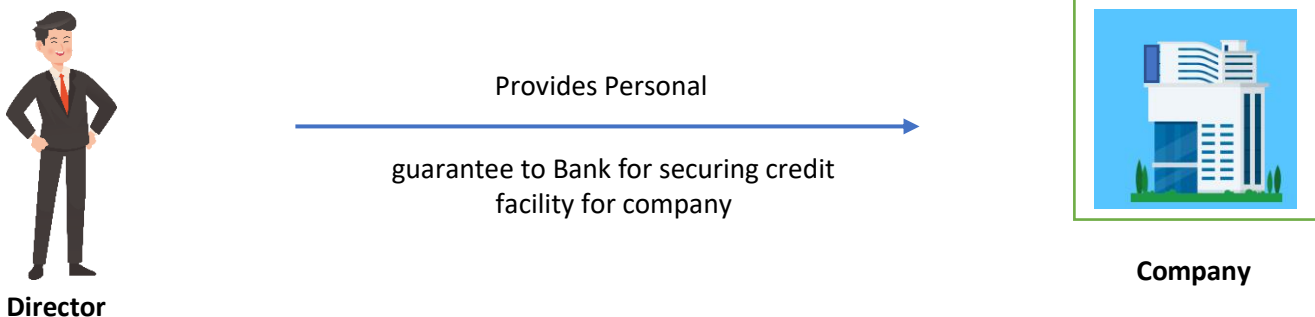
1. Notification No. 66/2017 CT dated 15.11.2017 was earlier issued to exempt all registered persons from the requirement of payment of tax at the time of receipt of advances in case of supply of goods

2. **With effect from 01.10.2023**, said notification has been amended to **exclude registered persons making supply of specified actionable claims.**

3. so that in case of specified actionable claims, the tax can be paid at the time of receipt of payment for such supplies by the suppliers.

3. Taxability and valuation of personal guarantee by Directors and corporate guarantee by related person, for the company [Rule 28 amended]

a. Service without C



Q. Will this service amount to supply?

Ans :

1. Director and company are related persons. Therefore the supply of service even without consideration will be treated as supply as per schedule I
2. The value of such supply is taken as OMV i.e. Open Market Value
3. However, as per the RBI Guidelines in this regard, 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, except in exceptional cases.

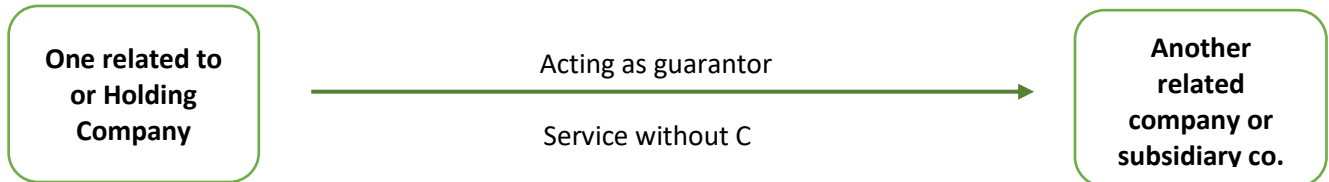
4. OMV of such supply = 0
No tax is payable on such supply.

1. However, in exceptional cases, where remuneration is payable to the director, the taxable value of such supply of service shall be the remuneration/ consideration provided to such guarantor by the company, directly or indirectly.

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2. Instances where consideration is payable to the director may include 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 where the promoters, existing directors, are paid remuneration/ consideration in any manner, directly or indirectly.

b.



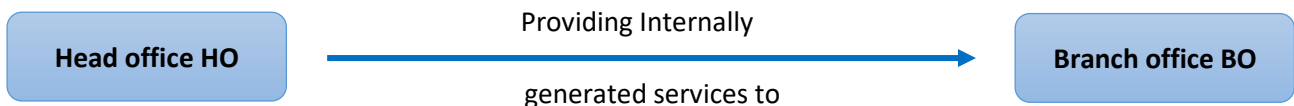
Question : Whether such service is a taxable supply? If yes then what will be it's valuation?

Ans :

1. It will be supply as per Sch.I Because services between related persons or between holding and subsidiary shall be supply even if without consideration
2. In such cases, the taxable value will be determined as per the newly inserted rule
3. As per rule 28(2), value in above cases will be higher of:
 - (i) 1% of the amount of such guarantee offered,
 - or
 - (ii) actual consideration.

4. Clarification regarding internally generated services - where HO is providing certain services to the BOs for which full ITC is available to the concerned Bos

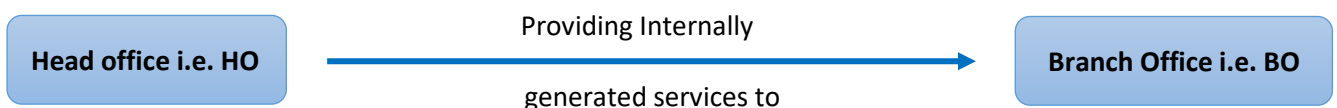
a.



BO is taking full ITC of such services

- i. As per rule 28 the value of such supply = OMV of such services
 - i.e. Value declared on invoice = Deemed to be OMV of such services
- ii. 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.
- iii. If HO has not issued a tax invoice to the BO in respect of any particular services the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as OMV in terms rule 28.

b.

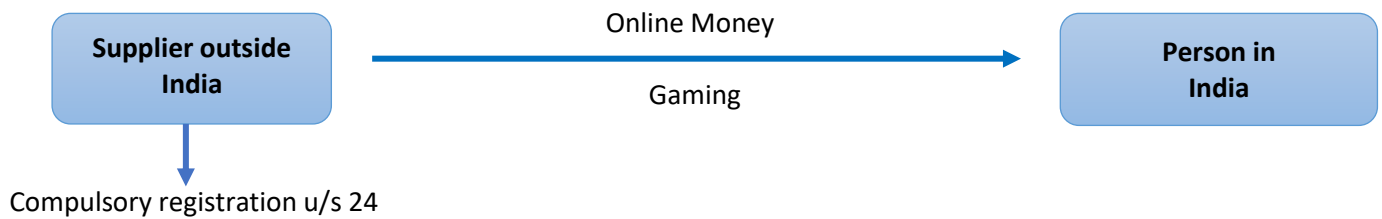


Where full ITC is not available to the concerned BO

REGISTRATION

1. Section 24 – Compulsory registration

- i. Online money gaming has been made taxable by amending Schedule III by the CGST Amendment Act, 2023, with effect from 01.10.2023.
- ii. Every person supplying online money gaming from a place outside India to a person in India are required to obtain registration compulsorily.



3. Such persons can apply for registration even without providing PAN.
4. The simplified registration procedure applicable to a person supplying OIDAR services from outside India also mode applicable to such persons.

2. Requirement of the presence of the applicant for physical verification of business premises done away with [Proviso to rule 9(1) amended and rule 25 substituted]

1. Physical verification of business premises could be carried out in the following cases
 - a) a person, fails to undergo Aadhaar authentication or does not opt for Aadhaar authentication; or
 - b) a person, who has undergone Aadhaar authentication, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification
 - c) the PO deems it fit to carry out physical verification of places of business,

In such cases registration could be granted within 30 days after such physical verification.

2. Earlier physical verification could be carried out by PO in presence of applicant presence of applicant is not required.
3. Sometimes verification is required after grant of registration. For such verifications also presence of the applicant is not required. In such a case PO should upload the report within 15 working days from verification.

3. Details of bank account required to be furnished within 30 days of grant of registration or (ii) before filing of GSTR-1/ IFF, whichever is earlier [Rule 10A amended]

1. While making an application for registration, applicant has to give bank details.
2. Rule 10A relaxes this requirement where the bank details can be furnished which is as follows.
Within ~~45~~ 30 days from date of grant of registration or Submission of GSTR1 or IFF ↓

4. System based suspension of registration in case of failure to furnish the details of valid bank account within stipulated time. Automatic revocation on furnishing said details [Rule 21A(2A) substituted and third proviso to rule 21A(4) inserted]

1. Registration of a person maybe suspended on account of following reasons
 - a) If there is a significant difference in outward supply on compassion of GSTR – 1 and the GSTR – 3B
 - b) If there is a significant difference in inward supply of compassion of GSTR – 3B and inward supplies based or details derived from their suppliers
 - c) there is a contravention of the provisions of rule 10A by the registered person,

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2. The person shall be intimated in prescribed form by sending a communication to his e-mail address provided
3. The said person is asked to explain, within a period of 30 days, as to why his registration shall not be cancelled.
4. Where the registration has been suspended as above for contravention of provisions of rule 10A the suspension of registration shall be deemed to be revoked upon compliance with the provisions of rule 10A.

5. Time-limit for filing application for revocation of cancellation of registration increased to 90 days and extension of 180 days permitted on sufficient reason being shown

1. Earlier time limit for application of revocation was

30 days
(30 days application)

+ 30 days
**extension by joint/
Additional commissioner**

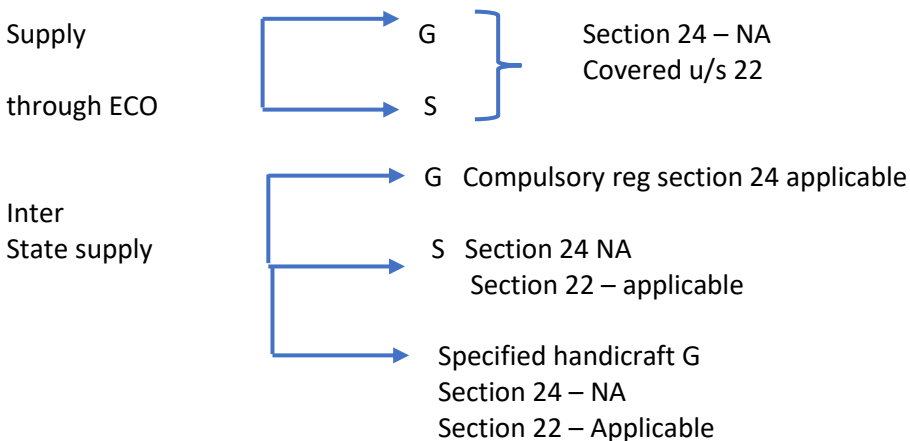
+ 30 days
(extension by commissioner)

2. Now the time limit has been extended

The time limited for application is now 90 days + further extension of not more than 180 days by commissioner or authorised officer.

6. Supply of G through ECO

1. Earlier supply of G through ECO was need in compulsory registration. Now compulsory registration not required
Supply of G/S through ECO can be done by unregistered suppliers.



2. Supplier supplying G through ECO exempt from compulsory registration subject to following conditions.

- i. such persons shall not make any inter-State supply of goods;
- ii. such persons shall not make supply of goods through ECO in more than one State/Union territory;
- iii. such persons shall be required to have a PAN issued under the Income-tax Act, 1961;
- iv. such persons shall, before making any supply of goods through ECO, declare on the common portal:
 - a. their PAN
 - b. address of their place of business and
 - c. State/UT in which such persons seek to make such supply, which shall be subjected to validation on the common portal;
- v. such persons have been granted an enrolment number on the common portal on successful validation of the PAN declared above;
- vi. such persons shall not be granted more than one enrolment number in a State/UT;
- vii. no supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal; and

- viii. where such persons are subsequently granted registration under section 25, the enrolment number shall cease to be valid from the effective date of registration.

3) ECO has to follow special procedure for unregistered supplier selling G as follows

- i. ECO shall allow the supply of G through it only if enrolment number has been allotted on the common portal to the supplier;
- ii. ECO shall not allow any inter-State supply of G through it
- iii. ECO 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. ECO 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. (Pan - wise).

Where multiple ECOs are involved in a single supply of goods through ECO platform, "ECO" shall mean the ECO who finally releases the payment to the said person for the said supply made by the said person through him.

PAYMENT OF TAXES

1. Clarification in case of wrong available of IGST credit and reversal these of

- 1) Wrong credit is assumed to be utilised when the e credit ledger balance falls below the wrong ITC available amt.
- 2) For wrong IGST credit while counting the e credit ledger balance the total ITC of IGST + CGST + SGST will be considered. And not individual IGST balance.
- 3) Also the balance of compensation cess in e credit ledger will not be considered while calculating the interest u/s 50(3).

This is because the compensation cess amt cannot be used for paying IGST/CGST/SGST liabilities.

RETURNS

1. Return form - GSTR-5A also to (i) contain details of supplies made by the OIDAR service provider outside India to registered persons in India and (ii) be furnished by persons supplying online money gaming from a place outside India to a person in India [Rule 64 amended]

- a. Earlier, rule 64 stipulated that every registered person providing OIDAR services from a place outside India to a person in India other than a registered person shall file return in **Form GSTR-5A**.
- b. Thus, earlier GSTR-5A did not capture the details or supplies made by the OIDAR service provider to registered persons in India; tax on such services is payable under reverse charge basis.
- c. **With effect from 01.10.2023**, rule 64 has been amended to include the details of supplies made by the OIDAR service provider located outside India to registered persons in India other than non-taxable online recipient in India for tracking of payment of tax on reverse charge basis by registered taxpayers.
Further, a registered person providing online money gaming from a place outside India to a person in India is also required to furnish Form GSTR-5A.

2. Class where person shall be debarred from filing GSTR -1 or IFF?

In following cases person shall be debarred from filling GSTR – 1 or IFF

1. When a person has not filed GSTR – 1 of the previous periods
2. A person has not filed GSTR – 3B of the preceding month

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3. A person opting for QRMP shall not be allowed to file GSTR -1 or IFF if GSTR - 3B of the preceding tax period has not been filed.
4. A person who has received intimation on common portal under rule 88C
5. A registered person to whom intimation under Rule 88D has furnished and the amount of excess ITC still remains to be paid or he offers no explanation.
6. **a registered person shall not be allowed to furnish GSTR-1/IFF, if he has not furnished the details of the bank account as per the provisions of rule 10A.**

3. Rule 88C

- i. Wherever there is difference in tax liability as per GSTR - 1 / IFF and as per GSTR – 3B and such difference is such percentage or amount as recommended by the GST council.
- ii. In such a case an intimation shall be garneted electronically on the portal and also sent on mail.
- iii. The Intimation shall highlight the difference in the liability.
- iv. The tax payer shall within 7 days pay the differential tax or submit a reply electronically stating the reasons for the unpaid liability.

4. Rule 88D

A system based intimation in case there is difference in ITC in 2 B and ITC availed in return – Rule 88D

- i. New rule 88D has been introduced to give a system-based intimation to the registered person in those cases where difference between the ITC availed as per GSTR-3B and that available as per GSTR-2B exceeds such amount and such percentage as may be recommended by the Council.
- ii. Such registered person shall, upon receipt of said intimation, either,
 - (a) pay an amount equal to the excess ITC, as specified in intimation, fully or partially, along with interest payable, through prescribed form and furnish the details thereof, electronically on the common portal, or
 - (b) furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess ITC that has still remained to be paid, within 7 days' period.
- iii. Where any amount specified in the intimation remains to be paid within 7 days' period and where no explanation/reason is furnished by the registered person in default the said amount shall be liable to be demanded in accordance with the provisions of section 73/section 74.
- iv. Also such person shall be debarred from filling GSTR -1 /IFF.

EXEMPTIONS FROM GST

(i) Amendments in the existing exemptions

Following existing exemptions have been amended:

Entry No.	Description of services
19C	Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited. (wef 27.07.2023)
6	Services by the Central Government, State Government, Union territory or local authority excluding the following services— <ol style="list-style-type: none">(a) services by the Department of Posts and the Ministry of Railways (Indian Railways);(b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;(c) transport of goods or passengers; or(d) any service, other than services covered under entries (a) to (c) above, provided to business entities. (wef 20.10.2023)

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(ii) New exemptions introduced – Service provided to govt.

Following new services have been exempted from CGST:

Entry No.	Description of services
3B	Services provided to a Governmental Authority by way of – (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation. (wef 20.10.2023)

iii. Further, following amendment has been carried out in the amendment provided in relation to inter-State supply of services by way of Entry 10 of Notification No. 9/2017 IT(R) dated 28.06.2017:

Entry No.	Description of services
10	Services received from a provider of service located in a non- taxable territory by – a. CG/SG/UT/LA/GA/ an individual in relation to any purpose other than commerce, industry or any other business or profession; b. an entity registered under section 12AA/12AB of the Income-tax Act, 1961 for the purposes of providing charitable activities; or ba. way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of- i. pre-school education and education up to higher secondary school or equivalent; or ii. education as a part of an approved vocational education course; c. a person located in a non-taxable territory. However, the exemption shall not apply to – (i) OIDAR services received by persons specified in entry (a) or entry (b). ; or (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

INPUT TAX CREDIT

1. Value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers. Shall be included in the value of exempt supplier.

2. Clarification regarding availment of 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

The following clarification has been issued:

Issues :

Whether HO can avail the ITC in respect of common input services procured from a third party but attributable: (i) to both HO and BOs or (ii) 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 (ISD) mechanism⁴ for distribution of ITC in respect of such common input services?

Clarification :

It is clarified that in such a case, as per the present provisions of the law, it is not mandatory for the HO to distribute such ITC by ISD mechanism.

HO has an option to:

- i. distribute ITC in respect of such common input services by following ISD mechanism, or
- ii. issue tax invoices under section 31 to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of sections 16 and 17.

ISD mechanism can be opted only if the said input services are attributable to the said BO or have actually been provided to the said BO. In case ISD mechanism is opted, HO is required to get itself registered mandatorily as an ISD. Similarly, the HO can issue tax invoices under section 31 to the concerned BOs, only if the common input services have actually been provided to the concerned BOs.