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GST

AMENDMENTS

Applicable For
MAY / SEP 25 Exam



*Think GST....
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By CA Vishal Bhattad

Index

Sr. No.	Chapter Name	Pg. no.
1.	Concept of Supply	1
	Amendment in Clarification	
i)	Clarification on the taxability of ESOP/ ESPP/RSU provided by a company to its employees through its overseas holding company [Cir. No.213/07/2024]	1
ii)	Clarification on whether GST is payable by insurance company on salvage/wreck value earmarked in the claim assessment of the damage caused to the motor vehicle [Cir. No.215/09/2024]	1
iii)	Applicability of GST on Preferential Location Charges (PLC) collected along with consideration for sale/ transfer of residential / commercial properties (Cir. No. 234/28/2024)	2
2.	Reverse Charge Mechanism	3
	Amendment in Notification	
i)	RCM In case of Supply of Goods	3
ii)	RCM in Case of supply of services - Entry 5AB :- Renting of any immovable property other than residential dwelling	3
3.	Exemption From GST	4
	Amendment in Notification	
	Existing Exemption Amended	
i)	Si.No. 12 :- Renting of Residential Dwelling	4
iii)	Si.No. 66 [Cir No. 234/28/2024] :- Education & Training	6
iii)	Sr. No.71: Training Service under Deen Dayal Upadhyaya Grameen Kaushalya Yojana	8
iv)	Sr. No. 69 :- Service by NSDC etc.	8
	Exemption Newly Added	
i)	Si.No. 12A with Cir No. 228/ 22/2024 :- Accommodation services	4
ii)	Si.No. 66A [Cir No. 234/28/2024] :- Affiliation Services by Educational Boards or Councils to Government-Controlled Schools	6
iii)	Si.No. 9E : Certain services provided by Indian Railways	7
iv)	Si.No. 9F : Services provided by one zone/division under Ministry of Railways	7
v)	Si.No. 9G : Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways	7
vi)	Si.No. 25A : Ancillary Services in Electricity Transmission & Distribution	7
vii)	Si.No. 44A : Research & Development Services Funded by Govt Entities & Notified Institutions	7
viii)	Si.No.36A: Re-Insurance Services	8
	Amendment in Clarification	
i)	GTA with cargo handline services eg. packing charges, loading, unloading charges etc. (Cir. No. 234/28/2024)	9

	ii)	Clarification on taxability of transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person (Cir. No. 218/12/2024 dt 26.06.24):-	10
	iii)	GST on statutory collections made by Real Estate Regulatory Authority (RERA) [Cir. No. 228/22/2024]	10
4.	Time of Supply		11
	Amendment in Clarification		
	i)	Clarification on TOS for payment of GST on spectrum usage services when payments are made in instalments by telecom operators (Cir. No. 222/16/2024)	11
	ii)	Clarification on TOS of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model i.e. (Circular No. 221/15/2024):-	12
5.	Value of Supply		13
	Amendment in Clarification		
	vi)	Clarification on availability of ITC for warranty replacement of parts and repair services during warranty period [Cir. No. 195/07/2023][Cir. No. 216/10/2024]	13
6.	Input Tax Credit		14
	Amendment in Section		
	i)	Newly added Subsec - Sec 16(5) & 16(6) :- Eligibility & Conditions of ITC	14
	Amendment in Rule		
	ii)	Rule 36(3) & (4) : Documentary requirements and conditions for claiming ITC	15
	Amendment in Clarification		
	i)	Clarification on time limit for availing ITC u/s 16(4) for RCM supplies received from URPs & tax paid under RCM (Cir.No. 211/5/2024)	15
	ii)	Availability of ITC in respect of Demo Vehicles purchase by dealer from manufacturer (Circular no. 231/25/2024):-	16
	iii)	Clarification on entitlement of ITC by insurance co. on expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement (Cir. No. 217/11/2024):-	17
	iv)	Clarification on availability of ITC on ducts & manholes used in the network of optical fiber cables (OFCs) u/s 17(5) (Cir. No. 219/13/2024)	18
7.	Place of Supply		18
	Amendment in Clarification		
	i)	Clarification on sec 10(1)(ca) of IGST Act on POS of goods to URPs (Cir.No. 209/3/2024)	18
8.	Payment of Tax		19
	Amendment in Rule		
	ii)	Rule 88B(1) : Manner of calculating interest on delayed payment of tax:-	19

9.	TDS-TCS		19
	Amendment in Section		
	i)	TDS:- following is notified u/s 51(1)(d):- inserted	19
	ii)	Old 3rd proviso to notification 50/2018: Substituted 3rd proviso:-	20
	Amendment in Notification		
	i)	Lower TCS Rate	20
	Amendment in Rule		
10.	Tax Invoice		20
	Amendment in Rule		
		Particulars of a tax invoice (Sec 31(1) & (2) read with 1Rule 46)	20
11.	E-Way Bill		20
	Amendment in Rule		
	i)	Rule 138 (3): Cases for Mandatory Generation of E-Way Bill, irrespective of consignment value:	20
12.	Registration		21
	Amendment in Sec		
	i)	Sec 23(2) - Persons Not Liable For Registration	21
	Amendment in Rule		
	ii)	Rule 8 (4A):- Procedure for Application for Registration	21
	iii)	Rule 21:- Cancellation/ Suspension of Registration	21
	iv)	Rule 21A(2A):- Suspension of Registration	21
13.	Return		22
	Amendment in Section		
	i)	Sec 44 :- Exemption from filing Annual Return	23
	Amendment in Rule		
	i)	Rule 59:- Form and manner of furnishing details of outward supplies 59(1): Form to furnish details of outward supplies 59(4A): Details in GSTR-1A (Newly Inserted)	22 23
	ii)	Rule 62(1) :- Form and manner of submission of statement & return under composition scheme	23



CONCEPT OF SUPPLY

Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company [Cir. No.213/07/2024]

Facts:-

- 1) Indian companies offer Employee Stock Option Plan (ESOP)/Employee Stock Purchase Plan (ESPP)/Restricted Stock Unit (RSU) options of their foreign holding company to its employees as per the employment contract.
- 2) Upon employees exercising these options, the foreign holding company directly allots shares to the employees, and the cost is reimbursed by the Indian subsidiary to the foreign holding company.

Issue:- Whether these transactions should be considered as import of financial services and thus be liable for GST under RCM?

Clarification:-

- ESOP/ESPP/RSU is a part of employees remuneration as per their contract & thus, it is not a supply as per para 1 of Schedule III
- Securities/shares are neither goods nor services under the GST law & thus, its sale or purchase is not a supply.
- Thus, the reimbursement from the Indian subsidiary to the foreign holding company, when done on a cost-to-cost basis, is not subject to GST.
- However, if any additional fee, markup, commission, etc is charged by foreign holding company from the domestic subsidiary for such issuance, it will be considered as a supply of services of facilitating the transaction in securities and GST will be levied on the additional amount (being import of services) under reverse charge.

Case Study:- ABC Tech Pvt. Ltd., an Indian subsidiary of Global Tech Inc., a US-based company, offers its employees ESOPs as part of their compensation package. When an employee decides to exercise their stock options, Global Tech Inc. directly transfers the shares to the employee. ABC Tech Pvt. Ltd. reimburses Global Tech Inc. for the cost of these shares on a cost-to-cost basis.

Are ESOP/ESPP/RSU transactions considered as supply of goods or services under GST?

Hint:- No, ESOP/ESPP/RSU transactions are not considered as supply of goods or services under GST. Securities/shares are neither goods nor services as per the definitions in the GST Act.

Clarification on whether GST is payable by insurance company on salvage/wreck value earmarked in the claim assessment of the damage caused to the motor vehicle [Cir. No.215/09/2024]

Facts:-

- Insurance company insures the vehicles for any damages & in return, charges premium from owner of vehicle.
- The responsibility of the insurance company is to either repair the damaged vehicle or compensate the insured as per the terms of the insurance policy. What is the GST impact if,
 - a) Deduction of Salvage Value

b) Full Insured Declared Value (IDV) Settlement without deducting Salvage Value

Clarification:-

a) **Deduction of Salvage Value:** When the claim is settled after deducting the salvage value, the ownership of the salvage remains with the insured. The salvage does not become the property of the insurance Co., and the deduction of salvage value from the claim amount is not considered a supply, hence insurance company is not liable to pay GST on the same.

b) **Full Insured Declared Value (IDV) Settlement:**

- If the insurance contract stipulates settlement on full IDV without deducting salvage value/wreckage (as per the contract), the salvage becomes the property of the insurance Co. after settling the full claim amount.
- Thus, insurance company is liable to discharge GST on supply of the salvage to the salvage buyer.

Applicability of GST on Preferential Location Charges (PLC) collected along with consideration for sale/ transfer of residential / commercial properties (Cir. No. 234/28/2024)

- Allowing choice of location of apartment is **integral part** of supply of construction services.
- It is clarified that location charges or PLC paid along with consideration for the construction services of residential / commercial / industrial complex **forms part of composite supply**.
- The supply of construction services is main service & **PLC is naturally bundled** with it.
- It is eligible for **same tax** treatment as the main supply of construction service before issuance of completion certificate.



REVERSE CHARGE & ECO

Goods and services notified under reverse charge mechanism under section 9(3) of the CGST Act/ section 5(3) of the IGST Act are as follows:

Liability under RCM for Supply of Goods (N/N 4/2017 Central Tax(Rate))

S. No.	Description of supply of Goods	Supplier of goods	Recipient of supply (Liable to Pay Tax)
8.	Metal Scrap Newly Inserted by N/No. 06/2024	Any unregistered person	Any registered person

5AB Renting of any immovable property other than residential dwelling

Reverse Charge	Services	100 % Liability
Newly Inserted by N/N 09.2024	Service by way of Renting of any immovable property other than residential dwelling <div><div>By</div><div>Any unregistered person</div><div>To</div><div>Any registered person</div></div>	Any registered person



EXEMPTIONS FROM GST

Entry No.	Renting of Immovable Property Sector	
12	Renting of Residential Dwelling	
	Exemption	Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person Comment:- This service is exempt when recipient is unregistered person.
	Explanation 1	For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, – ➤ the registered person is proprietor of a proprietorship concern & rents the residential dwelling in his personal capacity for use as his own residence and ➤ such renting is on his own account and not for the proprietorship concern
	Explanation 2 (inserted) i.e. Non-applicability newly inserted by N/No. 04/2024 w.e.f. 15/07/24	Nothing contained in this entry shall apply to- a) accommodation services for students in student residences; b) accommodation services provided by Hostels, Camps, Paying Guest accommodations & the like. Comment:- ➤ Student residences refer to accommodations provided to students specifically. It includes student hostels/apartments, university/college dormitories, off-campus student housing & similar living quarters. ➤ Services provided by educational institutions, including housing as composite supply, is exempt from GST, but taxability of such individual service supplied depends on its nature & type of institution providing it.
12A	Accommodation services newly inserted by N/No. 04/2024 w.e.f. 15/07/24	
	Supply of accommodation services having value of supply less than or equal to ₹20,000 per person per month provided that the accommodation service is supplied for a minimum continuous period of 90 days	
	Non-applicability:-	➤ VOS exceeds ₹ 20,000 per person per month or ➤ Accommodation services supplied for less than 90 days or ➤ Accommodation services supplied for minimum non-continuous 90 days.
	<u>GST liability on certain accommodation services [Cir. No. 228/22/2024]</u>	
	<u>Issue:-</u>	1. Whether service of hostel accommodation, service apartments/hotels booked for longer period is a service of renting of residential dwelling for use as residence & exempted under Sl. No. 12? 2. Whether service of hostels for poor & middle-class students run by charitable trusts is exempt?

Clarification:-	<p>⇒ It is not exempt under entry 12 but it will be exempt under entry 12A, if it satisfies the conditions given thereunder.</p> <p>⇒ Also, If VOS of accommodation services supplied between 01.07.2017 to 14.07.2024 was ≤ ₹20,000 per person per month & was supplied for a minimum continuous period of 90 days, then GST liability on the same is regularized on 'as is where is' basis for such period.</p>
Meaning of As is Where is (Cir No. 236/30/2024)	<p>⇒ If matters are regularized on 'as is' or 'as is, where is basis', for 2 competing rates & GST is paid at lower of them, or at nil rate by some suppliers while other suppliers have paid at higher rate,</p> <p>⇒ payment at lower rate shall be treated as tax fully paid for regularized period. If taxpayers had paid at higher GST rate, they shall not be entitled to any refund.</p>

Sl.No.12	Renting of Residential Dwelling (RD) - for use as residence		
Supplier	Receipient	Taxability	Who will pay tax
⇒ Any Person [RP + URP]	URP(if use for residence)	Exempt	—
⇒ Any Person [RP + URP]	RP But if RP is - Proprietor - using RD in Personal capacity for own residence - Renting on own account	Taxable Exempt	Under RCM recipient (RP) is liable to pay tax —
Sl.No.12A	Accommodation Services (Hostels, residence for student, Camps, Paying Guest accommodations & the like.) - Value 20,000 PP/PM for Continuous period of 90 days		
⇒ Any Person [RP + URP]	Any Person [RP + URP]	Exempt	—
When tax payable on accommodation services:- <ul style="list-style-type: none"> ➤ Value > 20,000 PP/PM or ➤ Supplied for non-continuous period of 90 days ➤ If charges on daily basis & not on monthly basis 			
Renting of Immovable property other than Residential Dwelling (Fully taxable)			
⇒ RP	Any Person [RP + URP]	Taxable	Supplier (FCM)
⇒ URP	RP	Taxable	Under RCM recipient (RP) is liable to pay tax

Education Sector

66 Education & Training

Exemption

Education as a part of an **approved vocational education course**.

Notes:- Approved vocational education course includes

➔ **Approved Vocational Course:** A course by ITI/ ITC affiliated to **NCVET** or SCVT offering courses in trades notified under the Apprentices Act, 1961.

Private ITI :- Services given by private ITIs exclusively for trades designated under the Apprentices Act, 1961 are exempt from GST. However, services relating non-designated trades are subject to GST.

➔ **Modular Employable Skill Course (Skills for gainful employment to school drop-outs, workers etc.):** A course approved by NCVET, run by Directorate General of Training, Ministry of Skill Development and Entrepreneurship.

NCVET = National Council for Vocational & Educational Training, SCVT = State Council for Vocational Training

**Substituted by
N/No. 08/2024**

Clarification

GST on flying training courses conducted by FTO (Flying training Organizations) approved by the DGCA [Cir.No. 234/28/2024]

Education as a part of an approved vocational education course :- It is **clarified** that approved flying training courses conducted by Flying training Organizations (FTOs) approved by Directorate General of Civil Aviation (DGCA), wherein the DGCA mandates the requirement of a completion certificate, **are exempt**.

66A Affiliation Services by Educational Boards or Councils to Government-Controlled Schools

**newly inserted by
N/No. 08/2024**

Exemption

Services of affiliation provided

➔ **by** a Central or State Educational Board or Council or any other similar body,
➔ **To** a school established, owned or controlled by the CG, SG, UT, LA, Govt. authority or Govt. entity.

CBIC Clarification:- GST on Affiliation services provided by Universities to Colleges & Education Board to Schools [Cir. No. 234/28/2024]

1. ➔ Universities' affiliation services to colleges does not involve student admissions or exams.

➔ These services are **not exempt** from taxes, so an 18% GST applies.

2. ➔ Affiliation services provided to schools by Education board or Councils does not include student admissions or exams

➔ These services are **taxable**.

Government Sector

9E	Certain services provided by Indian Railways:-		newly inserted by N/No. 04/2024 w.e.f. 15/07/24
	Exemption	Services provided by Ministry of Railways (Indian Railways) to individuals by way of- a) Sale of platform tickets; b) Facility of retiring rooms/waiting rooms; c) Cloak room services; d) Battery operated car services.	
9F	Services provided by one zone/division under Ministry of Railways		
	Exemption	Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways).	
		Analysis: Intra railway transactions between different zones/divisions are exempt.	
9G	Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways		
	Exemption	Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways (Indian Railways) by way of allowing Ministry of Railways (Indian Railways) ➔ to use the infrastructure built & owned by them during the concession period against consideration & ➔ services of maintenance supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built & owned by the SPVs during the concession period against consideration	newly inserted by N/No. 04/2024 w.e.f. 15/07/24
	Definition of Special Purpose vehicles (SPVs)	A special-purpose vehicle (SPV) is a legal entity that allows multiple investors to pool their capital and make an investment in a single company. SPVs have multiple use-cases in the business world.	
25A	Ancillary Services in Electricity Transmission & Distribution		Newly Inserted by N/N 08/2024
	Exemption	Supply of services by way of ➔ providing metering equipment on rent, testing for meters / transformers / capacitor etc., releasing electricity connection, ➔ shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers.	
44A	Research & Development Services Funded by Govt Entities & Notified Institutions		
	Exemption: –Research and development services against consideration received in the form of grants supplied by – (a) a Government Entity; or (b) a research association, university, college or other institution, notified u/s 35(1)(ii)/(iii) of Income Tax Act, 1961. Proviso: – Research association, university, college or other institution, notified u/s 35(1)(ii)/(iii) of Income Tax Act, 1961 is so notified at the time of supply of the research and development service.		

71 Training Service under Deen Dayal Upadhyaya Grameen Kaushalya Yojana

Exemption:- Services provided by training providers (Project implementation agencies) under **Deen Dayal Upadhyaya Grameen Kaushalya Yojana** implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the **National Council for Vocational Education and Training**.

Substituted by N/N 08/2024

Life/ General Insurance Sector

36A Re-Insurance Services

Exemption:- Services by way of reinsurance of the insurance schemes specified in serial number **35 or 36 or 40**

Note:- entry no. 36- Life Insurance Services, entry no.40- Insurance Scheme for Government Services, entry no.35 - Specified General Insurance Scheme

Inclusion of retrocession services in reinsurance. :-

- As per IRDAI (Re-insurance) Regulations, 2018, 'Retrocession' means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another Indian Insurer or a CBR (Cross Border Re-insurer).
- Thus, 'reinsurance' under Sl.No. 36A of exemption notification **includes 'retrocession' services.**

Training Sector

69 Service by NSDC etc.

Substituted by N/N 08/2024

Exemption:- Any services provided by –

- a. the National Skill Development Corporation set up by the Government of India;
 - b. the National Council for Vocational Education and Training;
 - c. an Awarding Body recognized by the National Council for Vocational Education & Training;
 - d. an Assessment Agency recognized by the National Council for Vocational Education and Training;
 - e. a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training,
- in relation to–
- i) the National Skill Development Programme or any other scheme implemented by the National Skill Development Corporation; or
 - ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
 - iii) any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package.

CBIC Clarifications

GTA with cargo handline services eg. packing charges, loading, unloading charges etc. (Cir. No. 234/28/2024)

- **Bundle Invoice:-** Ancillary/incidental services provided by GTA in the course of transportation of goods by road is a composite supply of transport of goods, irrespective of invoicing method used by it.
- **Separate Invoice:-** If such services are not provided in the course of transportation of goods and are invoiced separately, then these services will not be treated as composite supply of transport of goods & taxable individually as cargo handling service

Clarification on taxability of transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person (Cir. No. 218/12/2024 dt 26.06.24):-

Issue:- Whether processing fee/ administrative charges/ loan granting charges etc. or interest/discount charged for granting of loan by a person to a related person or by an overseas affiliate to its Indian affiliate is a deemed taxable supply or not u/s 7(1)(c) read with para 2 & 4 of Sch I?

Clarification:-

Supply of services	As per sec 7(1)(c) & Para 2 & 4 Sch I , supply of goods &/or services or import of service between/from related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration.
Exemption	Granting loans/ credit/ advances, for consideration being interest or discount, is exempt.
Charges other than interest/discount	<ul style="list-style-type: none"> ➤ Processing fee/service fee/facilitation fee/ loan granting charges/ administrative charges is one-time charge to apply for loan to cover administrative cost to process loan & is non-refundable. ➤ These are generally charged by bank/FI & independent lender for checking financial standing, credibility of applicant, etc. ➤ Overseas affiliates or domestic related persons generally do not charge processing fee/ service fee, except interest/discount on loan because they may not require to follow such processes. ➤ Even between unrelated parties (bank/ independent lender & borrower), processing fee/ administrative charges/ loan granting charges etc., might not be there or might be waived based on their relations. ➤ Thus, if amount charged except interest/discount are consideration that are liable to GST.
Conclusion	<p><u>1. If consideration (other than interest/discount) is not charged from related person, or by overseas affiliate from Indian party for extending loan/ credit:-</u></p> <ul style="list-style-type: none"> ➤ There is no supply of service between them u/s 7(1)(c) read with para 2 & 4 of Sch I. ➤ There is no question of levy of GST on it by resorting to OMV as per rule 28. <p><u>2. If consideration (in addition to interest/discount) is charged from related person, or by overseas affiliate from Indian party for extending loan/ credit:-</u></p> <ul style="list-style-type: none"> ➤ It is a supply of services of processing/facilitating/ administering, etc. of loan. ➤ Such consideration will be liable to GST.

GST on statutory collections made by Real Estate Regulatory Authority (RERA) [Cir. No. 228/22/2024]

- RERA is constituted under Real Estate (Regulation & Development) Act, 2016 to regulate real estate development & construction of building entrusted to them under Indian Constitution.
- RERA is a governmental authority as per definition in exemption notification.
- **Thus, statutory collections made by RERA are exempt.**



TIME OF SUPPLY

Clarification on TOS for payment of GST on spectrum usage services when payments are made in instalments by telecom operators (Cir. No. 222/16/2024)

Facts:- Telecom operators bid for spectrum rights from the govt. Service provider is the Govt. of India, and recipient is the telecom operator. GST is paid by the telecom operator on a reverse charge basis.

Issue :- How to determine TOS?

Clarification:-

Type of supply:	For spectrum allocation services where telecom operators opt for deferred payments, the supply is treated as a continuous supply of service as it is agreed to be continuously provided for more than 3 months with periodic payment obligations.
Tax invoice:	As per sec 31(5)(a) , invoices must be issued on or before the due date of payment by recipient which is ascertainable from the contract.
TOS u/s 13(3):	<ul style="list-style-type: none">➔ If full upfront payment is made by telecom operator, GST is payable when the payment is due or made, whichever is earlier.➔ For deferred payments, GST is payable as and when each instalment is due or paid, whichever is earlier.
Other services:	This principle also applies to other government-allocated natural resources with similar payment options (i.e. upfront or deferred payments).

Clarification on TOS of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model i.e. (Cir. No. 221/15/2024):-

Nature of HAM Contracts	<ul style="list-style-type: none"> ➤ HAM contracts are single agreements covering both construction & O&M of highways along with the required payments for both. ➤ Certain portion of Bid Project Cost is received during construction period & remaining payment through deferred payment (annuity) spread over 15-17 years. ➤ Payment for each instalment is to be made after specified periods, or on completion of an event, as specified in the contract.
Type	This model is covered under 'continuous supply of services'
TOS as per sec 13(2) read with sec 31(5)	<ul style="list-style-type: none"> ➤ If invoices are issued within time, TOS shall arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before specified date or date of completion of event specified in contract. ➤ If invoices are not issued on or before the specified date or completion of event as per contract, TOS shall be earlier of - date of provision of service (i.e. due date of payment) or date of receipt of payment. <p>Note: Date of provision of service = due date of payment as per contract, as invoice is required to be issued on or before the due date of payment u/s 31(5).</p>
Interest from NHAI	The annuity/instalment payable from NHAI to concessionaire, which may include an interest component , are included in value & taxable u/s 15(2)(d) .



VALUE OF SUPPLY

Clarification on availability of ITC for warranty replacement of parts and repair services during warranty period [Cir. No. 195/07/2023]

- 1) What will be the answer if distributor replaces goods/its parts to customer under warranty out of his own stock on behalf of manufacturer & on requisition raised, later gets replenishment of said parts/goods from manufacturer? [Circular No. 216/10/2024]
- ➔ The manufacturer provides the said goods/parts to distributor through a **delivery challan, without separately charging any consideration** at the time of such replenishment.
 - ➔ Thus, **no GST is payable** on such replenishment.
 - ➔ Further, **no reversal of ITC** is required to be made by manufacturer for goods/parts so replenished.
- 2) **Issue :- Nature of supply of extended warranty in certain cases** [Cir. No. 216/10/2024]
- Clarification:**
- (a) If customer enters into agreement of extended warranty with supplier of goods at the time of original supply, :-**
- Consideration for extended warranty becomes part of value of **composite supply, principal supply being SOG**, & GST is payable accordingly.
 - If supplier of extended warranty & supplier of goods are different, then extended warranty will be treated as a **separate taxable supply of service**.
- Comment:-** Sometimes supplier of goods may be a dealer while supplier of extended warranty may be OEM or 3rd party. Thus, both are different.
- b) If consumer enters into an agreement of extended warranty at any time after the original supply:**
Supplier of extended warranty shall treat it as **supply of services distinct from original SOG** & pay GST accordingly on this service.



INPUT TAX CREDIT

Sec 16 :- Eligibility & Conditions of ITC

5. Extension of Time limit	Notwithstanding anything contained in sec 16 (4), in respect of an invoice or debit note for supply of goods or services or both <ul style="list-style-type: none">➤ pertaining to the Financial Years 2017-18, 2018-19, 2019-20 & 2020-21,➤ the RP shall be entitled to take ITC in any return u/s 39 which is filed upto the 30th Nov 2021.												
6. Claiming ITC for Invoices Post-Revocation of Registration Cancellation	<p>Where registration of a RP is cancelled u/s 29 and subsequently the cancellation of registration is revoked by an order</p> <p>the said person shall be entitled to take the ITC in respect of such invoice or debit note (on which ITC was not taken yet) for supply of goods or services, in a return,–</p> <table><tr><td>i.</td><td>➤ Filed upto 30th November following the F.Y. to which such invoice or debit note pertains or</td></tr><tr><td></td><td>➤ Furnishing of the relevant annual return,</td></tr><tr><td></td><td>whichever is earlier</td></tr><tr><td colspan="2" style="text-align: center;">OR</td></tr><tr><td>ii.</td><td>Return is filed for the period from the date of cancellation till the revocation order, If the return is filed within 30 days of the revocation order,</td></tr><tr><td colspan="2">whichever is later of above (i) & (ii) .</td></tr></table> <p>Note:- where availment of ITC in respect of an invoice or debit note was not restricted u/s 16(4) on the date of order of cancellation of registration.</p>	i.	➤ Filed upto 30th November following the F.Y. to which such invoice or debit note pertains or		➤ Furnishing of the relevant annual return,		whichever is earlier	OR		ii.	Return is filed for the period from the date of cancellation till the revocation order, If the return is filed within 30 days of the revocation order,	whichever is later of above (i) & (ii) .	
i.	➤ Filed upto 30th November following the F.Y. to which such invoice or debit note pertains or												
	➤ Furnishing of the relevant annual return,												
	whichever is earlier												
OR													
ii.	Return is filed for the period from the date of cancellation till the revocation order, If the return is filed within 30 days of the revocation order,												
whichever is later of above (i) & (ii) .													

Newly Inserted by F.A. 2024 retrospectively effective from 01/07/17

CCP 09.02.09.01

ABC Pvt. Ltd. is engaged in the supply of electronic goods. During the FY 20XX-XY, the company's GST registration was cancelled on 15th August 20XX. Subsequently, the cancellation was revoked on 5th February 20XY by an order from Appellate Authority. ABC Pvt. Ltd. filed return for the period for which registration stood cancelled on 25th February 20XY. ABC Pvt. Ltd. has an invoice dated 20th July 20XX for goods supplied worth ₹1,00,000. Can ABC Pvt. Ltd. claim the ITC for the invoice dated 20th July 20XX? If yes, what is the time limit for the same?

Note: ABC Pvt. Ltd. has furnished annual return on 15th December 20XY.

Answer:- Legal Provision:

➤ As per **Sec 16(6)** of CGST Act, if the registration of a registered person is cancelled u/s 29 and subsequently revoked by an order, the registered person **can claim ITC** for the invoices or debit notes that were not restricted u/s 16(4) on the date of order of cancellation.

➤ **Its ITC can be claimed in the return filed till the later of following dates:**

- Earlier of 30th Nov of following year or date of furnishing Annual return.
- Return filed for period from the date of cancellation of registration or the effective date of cancellation of registration till the date of the order revoking the cancellation, if such return is

filed **within 30 days** from the date of the revocation order.

Discussion & Conclusion:

⇒ **Yes**, In the given case, ITC for the invoice dated 20th July 20XX will be claimed by the later of:-

a) 30th November 20XY i.e. the earlier of 30th November 20XY or 15th December 20XY or

b) 25th February 20XY i.e. the date of filing return for the period from 15th August 20XX (cancellation date) to 5th February 20XY (revocation order date).

⇒ **Thus ABC Pvt. Ltd. must claim the ITC by 30th November 20XY.**

Rule 36: Documentary requirements and conditions for claiming ITC

(3) **No ITC of tax paid towards demands involving fraud**

Inserted by N/No. 20/2024

Tax paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts u/s 74 cannot be availed as ITC.

Inserted by N/No. 12/2024

(4) **Details of invoices/debit notes uploaded by the supplier in his GSTR-1, as amended in GSTR-1A if any, or using IFF & such details are communicated in Form GSTR-2B of RP availing ITC**

CBIC Clarifications

Clarification on time limit for availing ITC u/s 16(4) for RCM supplies received from URPs & tax paid under RCM (Cir. No. 211/5/2024):-

Clarification:- ⇒ Registered recipient receiving supply from URP & also liable to pay tax under RCM has to issue invoice himself u/s 31(3)(f) & pays tax.

⇒ Based on such invoice, recipient becomes eligible to avail ITC.

⇒ Thus, **the relevant F.Y. for calculation of time limit u/s 16(4) to avail ITC shall be the F.Y. in which invoice is issued by recipient u/s 31(3)(f), subject to payment of tax & other conditions of sec 16 & 17.**

⇒ The F.Y. in which the supply was received is irrelevant here.

⇒ If recipient issues **invoice after its TOS** & pays tax, he has to pay interest on such delayed payment of tax & is also liable to **penal action u/s 122.**

Availability of ITC in respect of Demo Vehicles purchase by dealer from manufacturer (Cir.no. 231/25/2024):-

Issue 1	Authorised dealers purchase demo vehicles(seating capacity 13 or less) from manufacturers against tax invoices are used for trial run & demonstrate its features to potential buyers & then sold at WDV by paying GST.
Clarification	Demo vehicles are used for trial run & demonstrate its features to potential buyers. It's used to promotes sale & thus, are used for making 'further supply of such motor vehicles' . Thus, ITC for demo vehicles is not blocked u/s 17(5)(a) i.e ITC is available. If demo vehicle is used for other purposes like transportation of its employees/ management etc. where, they are not used for making 'further supply of such motor vehicles' & thus, ITC is blocked u/s 17(5)(a).
Issue 2	If dealer merely acts as an agent/service provider to manufacturer for providing marketing service or test drive to potential customers on its behalf.
Clarification	<ul style="list-style-type: none"> ➡ Dealer doesn't buy & sell vehicles directly on its own account. ➡ Instead, manufacturer issues sale invoice to customer. ➡ Dealer may sell said demo vehicle to a customer after specified time or kilometres as per agreement with manufacturer on payment of GST. ➡ Such demo vehicles are not used for making further supply of it. Thus, its ITC would be blocked.
Issue 3	ITC on demo vehicles if they are capitalized in books of account by authorized dealers
Clarification	<ul style="list-style-type: none"> ➡ If such vehicles are capitalized in books of dealer, it is considered as "capital goods". ➡ Availability of ITC on demo vehicles is not affected by its capitalization in dealer's books, they cannot claim ITC on that tax component. <ul style="list-style-type: none"> ➢ If capitalized demo vehicle is subsequently sold by dealer, he shall have to pay tax as per sec 18(6).

Clarification on entitlement of ITC by insurance co. on expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement (Cir. No. 217/11/2024):-

Facts:

- ➔ Insurance co. provide general insurance for motor vehicles & handle repair/damages costs through either Cashless or Reimbursement modes.
- ➔ Under both modes, repair invoices are issued by garages to insurance co.
- ➔ For Cashless mode, insurers directly pay network garages for approved repairs, while for Reimbursement mode, policyholders (insured) pay non-network garages (with whom there is no routine business relationship of insurance co.) & are later reimbursed by insurers for approved repair/claim cost (accounted repairs liability).
- ➔ Insurance co. avail ITC of tax paid for such repair services based on invoices issued by garages in both modes of settlement.

Clarification:- Availability of ITC to insurance co. for repair expenses reimbursed by it in case of reimbursement mode of claim settlement:-

- ➔ Sec 17(5) provides that ITC for repair service of motor vehicles shall be available where received by a taxable person engaged in supply of general insurance services in respect of motor vehicles insured by him.
- ➔ In reimbursement mode, the liability to pay for repair service for approved claim cost lies with insurance co., irrespective of fact that expense is first paid by insured to garage & then reimbursed to insured for approved claim cost.
- ➔ **ITC is available to insurance co. (as a recipient) for such repair expenses incurred in reimbursement mode, since such service is used for outward supply of insurance services for such motor vehicles & it is not barred u/s 17(5).**

Repairs invoices Not in Insurer's Name:-

Sec 16(2)(a) & (aa) is not satisfied & thus, ITC is not available to insurance co.

Clarification on availability of ITC on ducts & manholes used in the network of optical fiber cables (OFCs) u/s 17(5) (Cir. No. 219/13/2024)

Issue	The Cellular Operators Association of India (COAI) reported that some tax authorities were denying ITC on ducts and manholes used in OFC networks for telecommunication services, considering them immovable property (other than plant & machinery). Whether such ITC is barred u/s 17(5)(c) & (d) read with explanation to sec 17?
Clarification	<ul style="list-style-type: none"> ⇒ Sec 17(5)(c) & (d) restricts ITC on certain items related to immovable property, excluding plant & machinery. ⇒ Ducts & manholes are integral to OFC network for providing telecommunication services (signals from one point to another, etc.) & maintenance. ⇒ They are not classified as land, buildings, civil structures, telecommunication towers, or pipelines outside the factory premises. ⇒ Therefore, ducts & manholes fall under "plant & machinery" & are eligible for ITC & not blocked u/s 17(5)(c) & (d).



PLACE OF SUPPLY (IGST Act)

CBIC Clarifications

Clarification on sec 10(1)(ca) of IGST Act on POS of goods to URPs (Cir. No. 209/3/2024):-

Issue	POS u/s 10(1)(ca) of IGST Act, if SOG is made to URP where billing address is different from address of delivery of goods, especially in supply through e-commerce platforms?
Case	Mr. A (URP) located in X State places an order on an e-commerce platform for mobile phone. He provides billing address located in X state but mobile is to be delivered at an address located in Y State. What shall be the POS?
Clarification	<ul style="list-style-type: none"> ⇒ For goods supplied through e-commerce platforms to URP, if billing address differs from the delivery address in invoice, POS shall be the address of delivery of goods recorded on invoice i.e. State Y. ⇒ Supplier may record the delivery address as address of recipient on invoice to determine POS in this case.



PAYMENT OF TAX

Sec 50(1) read with Rule 88B :- Manner of calculating interest on delayed payment of tax

Proviso to Rule 88B (1)

Newly Inserted by
N/No. 12/2024

- Where any amount has been credited in Electronic Cash Ledger as per sec 49(1) on or before the due date of filing the said return,
- but is debited from the said ledger for payment of tax while filing the said return after the due date,
- the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return.

Que :- XYZ Pvt. Ltd. had ₹ 20,000 credited to their E-cash ledger by the due date for the month of January i.e. 20th Feb.20XX. Return for Jan is filed on 10th of March where net output tax liability payable to E-Cash ledger is ₹ 15,000. However, they did not debit this amount to pay their tax until 10th of March. Determine the amount of interest if any u/s 50(1). Would your answer differ if, amount credited to E-cash ledger ₹ 10,000 before due date?

HINT: i) XYZ Pvt. Ltd. **will not incur any interest for the ₹ 20,000** that remained in their E-cash ledger until debited after the due date.

ii) Interest is payable @ 18% on short payment amount of ₹ 5,000 as below:-

interest = $5,000 \times 18\% \times \frac{18}{365} = ₹ 44$ (assume Feb is not a leap year)

TDS-TCS

Sec 51 – TDS

Deductors of Tax at Source:- As per Sec 51 (1)

a	a department or establishment of the CG or SG
b	local authority
c	Governmental agencies
d	such persons or category of persons as may be notified by the Govt. on the recommendations of the Council.

Notified Person u/s 51(1)(d) [N/N 50/2018]

1	an authority or a board or 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
2	Society established by the CG or the SG or LA under the Societies Registration Act, 1860
3	Public sector undertakings (PSUs)
4	Any RP Receiving supplies of metal scrap from other RP

Inserted by
N/N 25/2024

Cases where TDS is not deductible:-

Tax is not liable to be deducted at source in the following cases:-

- (i) When goods and/or services are supplied from a PSU to another PSU, whether or not a distinct person [N/N 61/2018]
- (ii) When supply of goods and/or services takes place between one person to another person specified in clauses (a), (b), (c) and (d) of section 51(1) of the CGST Act [N/ N. 73/2018]

except any RP receiving supplies of Metal scrap from other RP's. Inserted by N/No. 25/2024

Tax collected at source (TCS) by ECO [Section 52]

Old Notified rate	Notified rate for TCS, CGST = 0.5%, SGST = 0.5%, IGST = 1% of the net value of intra-State/inter state taxable supplies
New notified rate	Notified rate for TCS CGST = 0.25%, SGST = 0.25%, IGST = 0.5% of the net value of intra-State/inter state taxable supplies

**Substituted by
N/No. 15/2024**



TAX INVOICE, DEBIT NOTE & CREDIT NOTE

Particulars of a tax invoice [Sections 31(1) & (2) read with rule 46]

Proviso (inserted): Provided that **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 un-registered, 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.**



E-Way Bill

Rule 138 (3): Cases for Mandatory Generation of E-Way Bill, irrespective of consignment value:

Newly Inserted by N/No. 12/2024

Process to generate e-way bill by an URP (Proviso 4)	<ul style="list-style-type: none">➤ An URP opting to generate e-way bill shall submit details electronically on common portal in prescribed form (Form GST ENR- 03) directly/through a notified Facilitation Centre.➤ Upon validation of furnished details, a unique enrolment number shall be generated & communicated.
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REGISTRATION

Sec 23(2) : Notified Persons Not Liable For Registration

Persons making only reverse charge supplies (N/N 5/2017)

Persons engaged only in making supplies of taxable goods &/ or services, total tax on which is liable to be paid on reverse charge basis by recipient u/s 9(3) are exempted from obtaining registration

Proviso (Inserted by 24/2024):- However, such exemption is not applicable to a person engaged in supply of metal scrap to a registered person.

Applicability of biometric based aadhaar authentication extended to all over India

Old Provision	By virtue of N/No. 27/2022, the provisions of rule 8(4A) of the CGST Rules, 2017 relating to biometric based Aadhaar authentication had been made applicable only to the States of Gujarat, Andhra Pradesh, and Puducherry.
Amended	However, now with rescinding of Notification No. 27/2022, the same have been made applicable to all the States and Union territories for the purpose of completion of registration application.

Rule 8(4A):- Aadhaar Authentication(AA)(biometric authentication)

**Newly Inserted by
N/No. 12/2024**

Proviso 2:- Additional Verification Steps if AA is **not opted** & its completion

- If a person [**other than a person notified u/s 25(6D)**] **has not opted** for authentication of Aadhaar number, every application made under sub-rule (4)(validation of part -B of REG-01) by him shall be followed by **taking photograph**
 - of the applicant where the applicant is an individual or
 - of such individuals in relation to the applicant as notified u/s 25(6C) where the applicant is not an individual,**along with the verification of original copy** of documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centers notified by Commissioner for this.
- The application shall be deemed to be complete only after successful verification of this process.

Sec 29 read with Rule 21 :- Cancellation of registration by PO on his own motion only:-

Additional 2 clauses has been added where PO may cancel the Registration of a person

**Inserted by
N/No. 12/2024**

fails to file return after revocation order	<ul style="list-style-type: none">➤ failed to file returns due between the order of cancellation and revocation of registration within 30 days of the revocation order.➤ If the cancellation was retrospective, failed to file all returns from the date of order of cancellation date to the revocation order within 30 days.
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RETURNS

Rule 59:- Form and manner of furnishing details of outward supplies:-

1	Who is required to furnish GSTR-1A & when it should be furnished?	Newly Inserted by N/No. 12/2024
	<p>➤ The said RP may , amend or furnish additional details of outward supplies of goods or services or both in GSTR-1A for the said tax period electronically at his own option through the GSTportal,</p> <p>➤ It shall be furnish after furnishing GSTR-1 for a tax period but before filing of return in GSTR-3B for the said tax period.</p>	
	Key features of Form GSTR-1A	
	<p>➤ GSTR -1A is an optional facility</p> <p>➤ It can be filed only once for a tax period after filing GSTR-1 but before submitting GSTR3B for a tax period.</p> <p>➤ It allows to amend the records filed in the Form GSTR-1 of current tax period only.</p> <p>➤ The corresponding effect of the changes made through Form GSTR-1A on the liability of the taxpayer shall be reflected in the Form GSTR-3B for the same tax period.</p> <p>➤ The tax on supplies declared or amended by the suppliers through Form GSTR-1A will be available to the recipient in Form GSTR-2B generated for the next tax period for ITC.</p>	
	For the Monthly taxpayers, who files FORM GSTR-1 on Monthly basis	
	<p>➤ There is no due date for filing of GSTR-1A for the taxpayer filing Form GSTR-1 on monthly basis</p> <p>➤ Form GSTR-1A will be available at the portal every month from the due date of filing of Form GSTR-1 or the actual date of filing of Form GSTR-1, whichever is later, and will be available till the actual filing of corresponding Form GSTR-3B of the same tax period.</p>	
	For the QRMP taxpayers, who files FORM GSTR-1 on Quarterly basis	
	<p>➤ Form GSTR-1A shall be available quarterly after actual filing of Form GSTR-1 (Quarterly) or the due date of filing of Form GSTR -1 (Quarterly), whichever is later, and will be available till the actual filing of Form GSTR-3B of the same tax period.</p> <p>➤ The supplies reported in Form GSTR-1 of the current tax period (including those declared in IFF, for the first month, M1 and second month, M2 of a quarter, if any) can be amended through corresponding quarterly GSTR-1A.</p> <p>➤ There will be no separate amendment facility available for records furnished through IFF for the months M1 and M2, during the month M1 and M2.</p>	
4A	Details in GSTR-1 / GSTR- 1A:-	
	Invoice wise details of ALL	1) Inter-State & Intra-State supplies made to registered persons 2) Inter-State supplies made to URP with invoice value > ₹2,50,000 ₹1 lakh
	Consolidated details of ALL	1) Intra-State supplies made to URP for each rate of tax 2) Inter-State supplies made to unregistered persons with invoice value upto 2.5 Lakh ₹1 lakh for each rate of tax separately for each State
	Debit & Credit notes	1) Issued during the month for invoices issued previously

GSTR-4 i.e. Return for composition supplier:-

Rule 62 (1)	(a)	Due date of filing GSTR- 4 for a financial year	By 30th day of the month of June following the end of such financial year Newly Inserted by N/ No. 12/ 2024
		Due date of filing GST CMP-08 for a quarter	By 18th day of the month succeeding such quarter

Sec 44 read with Rule 80:- Annual Return

Exemption from filing	Commissioner exempts the registered person whose aggregate turnover in F.Y. 2023-24 is up to ₹2 Cr from filing annual return for the said F.Y. Newly Inserted by(N/ No. 14/ 2024)
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