

Recommendations relating to GST Law and Procedure

Key Recommendations

1. Unutilized balance in CGST and IGST cash ledger allowed to be transferred between distinct persons (entities with same PAN) without refund procedure subject to certain safeguards.
2. Section 50 (3) of the CGST Act to be amended retrospectively, w.e.f. July 1, 2017, to provide levy of interest @ 18% on "ineligible input tax credit (ITC) availed and utilized" and not on "ineligible ITC availed".
3. Relaxation in the requirement of filing Form GST ITC-04:

Scheme	Filing Frequency	
	Present	Proposed
Taxpayers with annual aggregate turnover in preceding financial year (FY) above INR 5 crores	Quarterly	Six Monthly
Taxpayers with annual aggregate turnover in preceding FY year up to INR 5 crores	Quarterly	Annually

4. Provision to be introduced to remove ambiguity regarding procedure and time limit for filing refund of tax wrongfully paid on transaction considered as intra-State supply instead of inter-State supply and vice-versa.
5. Aadhaar authentication of registration to be made mandatory for filing refund claim and for revocation of cancellation of registration.
6. Late fee for delayed filing of Form GSTR-1 to be auto-populated and collected in next open Form GSTR-3B.
7. Refund to be disbursed in the bank account, which is linked with same PAN on which registration has been obtained under GST.
8. W.e.f January 1, 2022, taxpayer would not be allowed to furnish FORM GSTR-1, if he has not furnished the return in Form GSTR-3B for the preceding month.
9. Upon implementation of Section 16(2)(aa) of CGST Act, Rule 36(4) to be amended to restrict input tax credit ("ITC") availment to the extent of invoice/debit note furnished by supplier in GSTR-1/IFF and communicated to recipient through GSTR-2B.

Circulars

Circular No. 159/15/2021-GST dated 20.09.2021 - Clarification on doubts related to scope of "Intermediary"

- The scope of intermediary services clarified to ensure uniformity in interpretation of the said services.
- Definition under the IGST Act - *"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."*

- Primary requirements for intermediary services
 - **Minimum of three parties** – A natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply.
 - **Two distinct supplies** - 1) Main supply, between the two principals, which can be a supply of goods or services or securities. 2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.
 - **Intermediary service provider to have the character of an agent, broker or any other similar person** - The definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”. Intermediary must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.
 - **Does not include a person who supplies such goods or services or both or securities on his own account** – The definition of intermediary implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.
 - **Sub-contracting for a service is not an intermediary service** - An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.

Circular No. 160/16/2021-GST dated 20.09.2021 - Clarification in respect of certain GST related issues

Sr. No	Issue	Clarification
1	<p>Time limit prescribed under Section 16(4) of CGST Act to avail ITC by September return following the end of FY to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.</p> <p>Which date is relevant to determine the FY?</p> <p>a) date of issuance of debit note, or</p> <p>b) date of issuance of underlying Invoice</p>	<p>W.e.f 01.01.2021, Section 16(4) of the CGST Act was amended to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing ITC.</p> <p>It is clarified that availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of Section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions existed prior to amendment.</p> <p><i>Illustration 1.</i> A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. The debit note has been issued in FY 2021-22, the relevant FY for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision.</p>

Sr No	Issue	Clarification
		<i>Illustration 2.</i> A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of Section 16(4), the relevant FY for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier
2	Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued e-invoice?	It is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.
3	Whether the first proviso to Section 54(3) of CGST / SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty?	It is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under Section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to Section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

Circular No. 161/17/2021-GST dated 20.09.2021 - Clarification relating to export of services

- The Circular has been issued to clarify condition (v) of export of services as mentioned in Section 2(6) of the IGST Act.
- Condition (v) - The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8.
- Clarification:
 - Supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services."
 - A company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in Section 8".

- o Supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the Section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of Section 8 of IGST Act 2017. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of Section 8 of IGST Act 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of Section 2 of IGST Act.

Recommendations relating to GST rates on Goods and Services

Key GST rate changes [w.e.f October 1, 2021 unless otherwise stated]

Sr. No.	Description	Present Rate	Proposed Rate
Goods			
1	Medicine Keytruda for treatment of cancer	12%	5%
2	Biodiesel supplied to OMCs for blending with Diesel	12%	5%
3	Ores and concentrates of metals such as iron, copper, aluminium, zinc and few others	5%	18%
4	Specified Renewable Energy Devices and Parts	5%	12%
5	Cartons, boxes, bags, packing containers of paper etc.	12% /18%	18%
6	Waste and scrap of polyurethanes and other plastics	5%	18%
7	Miscellaneous goods of paperlike cards, catalogue, printed material (Chapter 49 of tariff)	12%	18%
Services			
8	GST exemption on transport of goods by vessel and air from India to outside India is extended up to September 30, 2022	-	-
9	Services by way of grant of National Permit to goods carriages on payment of fee	18%	Nil
10	Licensing services/ the right to broadcast and show original films, sound recordings, Radio and Television programmes [to bring parity between distribution and licencing services]	12%	18%
11	Printing and reproduction services of recorded media where content is supplied by the publisher (to bring it on parity with colour printing of images from film or digital media)	12%	18%

Other Rate related Recommendations

1. Concessional GST rate on Covid-19 treatment drugs viz., Amphotericin B, Remdesivir, Tocilizumab and Anti-coagulants like Heparin extended from September 30, 2021 to December 31, 2021. Further, concessional rate benefit extended on several other Covid-19 drugs such as Itolizumab, Posaconazole, Infliximab, Favipiravir, Casirivimab & Imdevimab, 2-Deoxy-D-Glucose and Bamlanivimab & Etesevimab up to December 31, 2021.
2. GST rate changes in footwear and textiles sector to correct inverted duty structure deferred for an appropriate time and would be implemented with effect from January 1, 2022.
3. Relaxations proposed in conditions relating to IGST exemption on import of goods on lease, where GST is paid on the lease amount, so as to allow this exemption even if –
 - such goods are transferred to a new lessee in India upon expiry or termination of lease;
 - the lessor located in SEZ pays GST under forward charge
4. W.e.f January 1, 2022, e-commerce operators liable to pay GST on the following services provided through them:
 - Transport of passengers by any type of motor vehicles
 - Restaurant services (with some exceptions)

Rate Clarifications

1. All laboratory reagents and other goods falling under heading 3822 attract GST @12%.
2. Scented sweet supari and flavored and coated illachi falling under heading 2106 attract GST @18%.
3. External batteries sold along with UPS Systems/ Inverter attract GST rate applicable to batteries [i.e. 28% for batteries other than lithium-ion battery] while UPS/inverter would attract GST @18%.
4. GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services respectively, during the period from July 1, 2017 to December 31, 2018, in the same manner as has been prescribed for the period on or after January 1, 2019.
5. All pharmaceutical goods falling under heading 3006 attract GST @12% instead of 18%.
6. Essentiality certificate issued by Directorate General of Hydrocarbons on imports would suffice and there would be no need for taking a certificate every time on inter-state stock transfer.
7. Services by cloud kitchens/central kitchens are covered under 'restaurant service' and attract GST @5% without ITC.
8. Ice cream parlour sells already manufactured ice- cream. Such supply of ice cream by parlours would attract GST @18%.
9. Services by way of grant of mineral exploration and mining rights attract GST @18% w.e.f. July 1, 2017.
10. Alcoholic liquor for human consumption is not food and food products for the purpose of the entry prescribing 5% GST rate on job work services in relation to food and food products.

Other Recommendations

1. The representation for inclusion of petroleum products within the ambit of GST was discussed and deferred by the Council.
2. It was deliberated that Compensation Cess collections in the period beyond June 2022 till April 2026 would be exhausted in repayment of borrowings and debt servicing made to bridge the gap in 2020-21 and 2021-22. It seems that the said Cess would continue till 2026.
3. GST Council decided to set up Group of Ministers (GoM) to examine –
 - Correction of inverted duty structure for major sectors, rationalize tax rates and review exemptions
 - Ways and means of using technology to further improve compliance including monitoring through improved e-way bill systems, e-invoices, FASTag data and strengthening the institutional mechanism for sharing of intelligence and coordinated enforcement actions by the Centre and the States

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MUMBAI

3rd Floor, Mistry Bhavan, Dinshaw Vachha Road,
Churchgate, Mumbai. 400 020, India.
Tel: +91 22 6623 0600

501/502, Narain Chambers, M.G. Road,
Vile Parle (East), Mumbai 400 057, India.
Tel: +91 22 6250 7600

www.cnkindia.com

Bengaluru: +91 80 2535 1353

Chennai: +91 44 4384 9695

Vadodara: +91 265 234 3483

Ahmedabad: +91 79 2630 6530

Gandhinagar: +91 79 2630 6530

Delhi: +91 11 2735 7350

Dubai: +971 4 3559533

Sharjah: +971 4 3559544