

Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd.

[Circular No.180/12/2022-GST dated 9th September 2022](#)

- In accordance with the directions of Hon'ble Supreme Court, the facility for filing TRAN-1/TRAN-2 or revising the earlier filed TRAN-1/TRAN-2 on the common portal by an aggrieved registered assessee will be made available by GSTN during the period from 01.10.2022 to 30.11.2022.
- Considering the judgments of the High Courts any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).
- TRAN-1/TRAN-2 can be filed online along with Annexure A .
- In case of revision of TRAN-1/TRAN-2 a facility

for downloading the TRAN-1/TRAN-2 furnished earlier by him will be made available.

- The applicant claiming credit in table 7A of FORM GST TRAN-1 on the basis of Credit Transfer Document (CTD) shall also upload on the common portal the pdf copy of TRANS-3, containing the details in terms of the [Notification No. 21/2017- CE \(NT\) dated 30.06.2017.](#)
- No claim for transitional credit shall be filed in TRANS-1 in respect of Form F/C/H/I which have been issued after 27.12.2017.
- Where the applicant files a claim in FORM GST TRAN-2, he shall file the entire claim in one consolidated FORM GST TRAN-2, instead of filing the claim tax period wise.
- Hard copy of TRAN 1/2/3 along with Annexure A to be submitted in 7 Days.
- The applicant shall keep all the requisite documents/ records/ returns/ invoices in support of his claim of transitional credit, ready for making the same available to the concerned tax officers for verification.
- It is to be noted that it is the only one last opportunity to file TRAN-1/TRAN-2 – No scope for errors after clicking "SUBMIT" button.

- Where the credit availed by the registered person on the basis of TRAN-1/TRAN-2 filed earlier is rejected / pending then adjudication/appeal is the appropriate action.
- The jurisdictional tax officer will pass an appropriate order after granting appropriate reasonable opportunity of being heard to the applicant.

Turnover for E-Invoicing increased to 10 Cr w.e.f. 1st October 2022

[Notification No. 17/2022 – Central Tax dated 1st August 2022](#)

- With effect from 1st October 2022, every registered taxable person whose aggregate annual turnover exceeds Rs. 10 Cr in any of the financial year from 2017-18 onwards is liable to issue E-Invoice.
- Earlier the limit was Rs. 20 Cr.
- As per Section 2(6) of CGST Act "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-state supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes Central tax, State tax, Union territory tax, integrated tax and cess.

Expiry of validity of GST exemption on transportation of goods by aircraft/vessel from India to outside India

- Entry No.20A/20B of [Notification No. 9/2017-Integrated Tax \(Rate\) dated 28.06.2017](#) amended through [Notification No. 2/2018 - Integrated Tax \(Rate\) dated 25.01.2018](#) exempted services by way of transportation of goods by aircraft/vessel from customs station of clearance in India to a place outside India from the levy of GST. This exemption was valid up to 30th September 2022, and no further extension has been granted.
- Taxability of Services: The place of supply of services provided by the airline/shipping lines to the Indian agents / exporters with respect to transportation of goods from India to outside India is determined based on proviso to Section

12(8) of the IGST Act, 2017. The said provision states that in case of the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods. As such, in terms of Section 7(5)(a) of the IGST Act, 2017, the said services would be considered as inter-State supply of services. Accordingly, the services of transportation of goods from India to outside India provided to Indian exporter / agent by airline covered under SAC 996531 would be liable to IGST@18% and by shipping line covered under SAC 996521 would be liable to IGST @5% without ITC and @ 18% with ITC w.e.f. 1st October 2022.

Guidelines for Arrest and Bail in relation to offences punishable under CGST Act, 2017

[Instruction No. 02/2022-2323 \[GST – Investigation\] dated 17th August 2022](#)

- A person can be arrested for eligible offences punishable under section 132 of the CGST Act, 2017. Arrests can be made under section 69 of CGST Act, 2017.
- Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully.
- The arrest should not be made in routine and mechanical manner.
- Reason to believe that alleged offender has committed any offence must be unambiguous and amply clear.
- Arrest should not be resorted in cases of technical nature.
- Board has prescribed procedures to be followed while conducting arrest.

Guidelines on Issuance of Summons u/s 70 of CGST Act, 2017

[Instruction No. 03/2022-23 \[GST – Investigation\] dated 17th August 2022](#)

As per Section 70 (1) of the CGST Act, 2017, summons can be issued by the proper officer to any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in an inquiry in the same manner, as provided in the case of a civil court under the provisions of Code of Civil Procedure, 1908.

While issuing of summons is one of the instruments with the Department to get/obtain information or documents or statement from any person to find out the evasion of the tax etc. however, it needs to be ensured that exercise of such power is done judiciously and with due consideration. Accordingly, Board has issued fresh guidelines under CGST as follows:

- Where summons is issued by Superintendent, prior written permission of officers not below the rank of DC/AC will be required
- Reasons to be recorded in writing for issue of summons.
- Officer has to record on file the appearance or non- appearance of the summoned person.
- Summons to be avoided to call for statutory documents already available on GSTN portal.
- Senior management /promoters (CMD, MD, CEO, CFO etc) of company or PSU should not be summoned in the first instance unless there is clear indication of their involvement.
- Summoned person should be aware as to whether he is being summoned as an accused, co-accused or witness.
- Summons should be in format as prescribed with DIN (Document Identification Number) quoted on it.
- All persons summoned are bound to appear before the officers concerned except women who do not by tradition appear in public.
- If the person summoned does not cooperate and join investigation even after repeated summons, generally 3 summons at reasonable interval, complaint shall be filed u/s 172 and 174 of Indian Penal Code (IPC) before the Magistrate.
- The standard of proof required in a criminal prosecution is higher than adjudication proceeding as the case has to be established beyond reasonable doubt.
- Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings.
- Prosecution should not be launched in cases of technical nature, or where additional claim of tax is based on a difference of opinion regarding interpretation of law.
- Further, the evidence collected should be adequate to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, or had fraudulent intention for committing the offence.
- In the case of public limited companies, prosecution should not be launched indiscriminately against all the directors of the company but should be restricted to only persons who oversaw day-to-day operations of the company and have taken active part in committing the tax evasion etc.
- Prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to offences specified u/s 132(1) of the CGST Act, 2017 is more than Rs. 5 crores, However, in cases of habitual evaders or where arrest have been made during course of investigation, prosecution could be initiated irrespective of monetary limit.
- Once the sanction for prosecution has been obtained, prosecution in the court of law should be filed as early as possible, but not beyond a period of 60 days by the duly authorized officer (of the level of Superintendent).

Guidelines for launching of prosecution under CGST Act, 2017

[Instruction No. 04/2022-23 \[GST – Investigation\] dated 1st Sept. 2022](#)

- Sanction of prosecution has serious repercussions for the person involved, therefore, the nature of evidence collected during the investigation should be carefully assessed.
- One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence.

KEY TAKE AWAY

- CBIC has issued guidelines for filing/revising TRAN-1/TRAN-2
- E-Invoicing become mandatory for businesses having turnover more than Rs. 10 Cr from 1st October 2022.
- Expiry of validity of GST exemption on transportation of goods by aircraft/vessel from India to outside India making it taxable under GST from 1st October 2022.
- CBIC has issued instructions giving guidelines to be followed for arrest & bail, for issuing summons and for launching prosecutions under GST.



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CNK
& ASSOCIATES LLP

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

Bengaluru: +91 80 2535 1353

Ahmedabad: +91 79 2630 6530

Pune: +91 020 2998 0865

Chennai: +91 44 3500 3458

GIFT City: +91 79 2630 6530

Dubai: +971 4 3559533

Vadodara: +91 265 234 3483

Delhi: +91 11 2735 7350