

# INDIRECT TAX AMENDMENTS

[APPLICABLE FOR CA INTER / CMA INTER /  
CS EXECUTIVE MAY / JUNE 2020 EXAMS]

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*This Amendment booklet contains summarized content of  
relevant notifications and circulars issued between 1 May  
2019 to 30 November 2019*

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**CA NIKUNJ GOENKA**

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## **1. SUPPLY**

***Service by way of grant of alcoholic liquor licence against consideration in the form of licence fee / application fee is neither a supply of goods nor a supply of service***

The Government has notified such activity or transaction undertaken by the State Governments in which they are engaged as public authorities, to be treated **neither as a supply of goods nor a supply of service** u/s 7(2) of the CGST Act. [Notification No. 25/2019 CT (R) dated 30.09.2019/ Notification No. 24/2019 IT (R) dated 30.09.2019]

The above special dispensation **applies only** to supply of service by way of grant of **liquor licenses** by the State Governments as an agreement between the Centre and States and has **no applicability or precedence value** in relation to grant of **other licenses** and privileges for a fee in other situations, where GST is payable.

**What are the services which are taxable in this regard?**

It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Tax is required to be paid by the business entities on such services under reverse charge. [Circular No. 121/40/2019 GST dated 11.10.2019]

**Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors**

**Issue:** Whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor?

**Facts:** Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude.

*When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business*

**Clarification:** *There is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.*

**Examples:** *Cases where there would be no taxable supply are as follows:-*

- a) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.*
- b) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.*

*It may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus, where following three conditions are satisfied, GST is not leviable*

- a) the gift or donation is made to a charitable organization,*
- b) the payment has the character of gift or donation and*
- c) the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement.*

**[Circular No. 116/35/2019 GST dated 11.10.2019]**

## **2. CHARGE OF GST**

**“Manufacturer” of aerated water & “supplier” of aerated water cannot opt to pay tax under composition levy and Notification No. 2/2019 CT(R) dated 07.03.2019 respectively**

A **manufacturer** of aerated water (Tariff item 2202 1010) will not be eligible to opt for composition scheme. Likewise, a **supplier** of aerated water (Tariff item 2202 1010) will also not be eligible to pay concessional tax under Notification No. 2/2019 CT (R) dated 07.03.2019. [Notification No. 43/2019 CT dated 30.09.2019 & Notification No. 18/2019 CT (R) dated 30.09.2019]

### **Amendments in reverse charge notifications**

Reverse charge on supply of services u/s 9(3) prescribed in Notification No. 13/2017 CT(R) dated 28.06.2017/ Notification No. 10/2017 IT (R) dated 28.06.2017 have been amended as under:

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#### **Amendment in existing services under reverse charge mechanism**

✚ Payment of tax under reverse charge made **optional** in case of supply of services by an **author by way of transfer/permitting the use or enjoyment of a copyright relating to original literary work to a publisher**. The author can choose to pay tax under forward charge if following conditions are fulfilled.

- has taken registration under the CGST Act, 2017,
- filed a declaration, in the form at Annexure I, with the jurisdictional CGST / SGST Commissioner that he exercises the option to pay CGST on the service specified above, under forward charge u/s 9(1) of the CGST Act, 2017,
- comply with all the provisions of CGST Act, 2017 as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both
- shall not withdraw the said option within a period of 1 year from the date of exercising such option; and
- makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST Inv-1 to the publisher.

***New services introduced under reverse charge mechanism***

<b><i>Nature of services</i></b>	<b><i>Supplier of service</i></b>	<b><i>Recipient of service</i></b>
<b><i>Renting of a motor vehicle provided to a body corporate</i></b>	<b><i>Any person other than a body corporate, who is paying CGST @ 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business</i></b>	<b><i>Any body corporate located in the taxable territory</i></b>
<b><i>Services of lending of securities under Securities Lending Scheme, 1997 (“Scheme”) of Securities and Exchange Board of India, as amended</i></b>	<b><i>Lender i.e., a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI</i></b>	<b><i>Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI</i></b>

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***Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997***

*SEBI has prescribed the Scheme for the purpose of facilitating lending and borrowing of securities. Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed*

*The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. Clause 4 of para 4 relating to the Scheme under the Scheme doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.*

*The lenders earn lending fee for lending their securities to the borrowers*



**Clarification:**

- ✚ The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time.
- ✚ The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01/07/2017. Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.
- ✚ The supply of lending of securities under the scheme is leviable to GST@18%. The borrower of securities shall be liable to discharge GST under RCM. The nature of GST to be paid shall be IGST under RCM. **[Circular No. 119/38/2019-GST dated 11 October 2019]**

<p><b>For the past period i.e. from 01/07/2017 to 30/09/2019</b></p>	<p>GST is payable under <b>forward charge</b> by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. <b>The nature of tax payable shall be IGST.</b> However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.</p>
<p><b>With effect from 01/10/2019</b></p>	<p>The borrower of securities shall be liable to discharge GST under RCM. <b>The nature of GST to be paid shall be IGST under RCM.</b></p>

### 3. EXEMPTIONS FROM GST

#### Amendments relating to existing exemptions to supply of specified services

##### + Government services

Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017.

##### + Services by Arbitral Tribunal

Services provided by an Arbitral Tribunal to a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;

##### + Legal services

Services by a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;

Services by a senior advocate by way of legal services to a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017.

##### + Accommodation service

Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation below or equal to Rs. 1,000 per day or equivalent.

##### + Transportation of goods to outside India

Services by way of transportation of goods by an aircraft/vessel from customs station of clearance in India to a place outside India upto 30.09.2020.



**+ Hiring of motor vehicle**

Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers.

EOV means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to such road vehicle.

**+ General insurance business**

Services of general insurance business provided under Bangla Shasya Bima scheme

**New exemptions on supply of specified services**

**+ Services by way of right to admission** to the events organised under FIFA U-17 Women's World Cup 2020.

**+ Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries** directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India.

**Condition to be fulfilled:** Director (Sports), Ministry of Youth Affairs and Sports have to certify that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020.

**+ Services of life insurance** provided/agreed to be provided **by the Central Armed Police Forces** (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.

**+ Services by way of storage/ warehousing** of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.

**Notes:** Parallel exemptions from IGST have been extended to supply of specified inter-State services.

**Clarification regarding applicability of GST on delayed payment charges in case of late payment of Equated Monthly Instalments (EMI)**

**Issue:** (i) Whether GST is applicable on additional / penal interest on the overdue loan?  
(ii) Whether such penal interest would be exempt under exemption notification as banking services or it would be taxable treating it as consideration for **liquidated damages**<sup>1</sup>?

**Clarifications:** (i) The value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply u/s 15(2)(d).

(ii) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is **exempted**.

There are **two** transaction options involving EMI that are prevalent in the trade which are discussed below:

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**Illustration 1:** X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. However, X gives Y an option to pay in installments, ₹ 11,000 every month before 10<sup>th</sup> day of the following month, over next four months (₹ 11,000 × 4 = ₹ 44,000). As per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to ₹ 500 per month for the delay. In some instances, X is charging Y ₹ 40,000/ for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/ penal interest amounting to ₹ 500/- per month for each delay in payment.

**Answer:** Penal interest is to be included in the value of supply u/s 15(2)(d). The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

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<sup>1</sup> It implies that it would amount to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the CGST Act, 2017 i.e. “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”

**Illustration 2:** X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. Y has the option to avail a loan at interest of 2.5% per month for purchasing the **mobile from M/s. ABC Ltd.** The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/ penal interest @ 1.25% per month for any delay in payment. Here, the additional/ penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under exemption.

**Answer:** In this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. **would not be subject to GST** as the same would be covered under exemption.

However, any **service fee/ charge** or any other charges, if any, are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances **does not qualify to be interest** as defined in exemption notification, and accordingly will not be exempt. Moreover, the value of supply of mobile by X to Y would be Rs. 40,000 for the purpose of levy of GST.

It is further **clarified** that the transaction of levy of **additional/ penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act** as this levy of additional/ penal interest satisfies the definition of "interest" as contained in exemption notification [elaborated above]. **[Circular No. 102/21/2019-GST dated 28.06.2019]**

**Clarification on issues related to GST on monthly subscription/ contribution charged by a Residential Welfare Association from its members**

<b>Issues</b>	<b>Clarifications</b>
Are the maintenance charges paid by residents to Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?	Supply of service by RWA to its own members by way of reimbursement of charges or share of contribution up to an amount of ₹ 7,500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST
A RWA has aggregate turnover of ₹ 20 lakh or less in a FY. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than ₹ 7500 per month per member?	<b>No.</b> If aggregate turnover of an RWA does not exceed ₹ 20 Lakhs in a FY, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds ₹ 7,500 per month per member.  RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than ₹ 7,500 per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also ₹ 20 lakhs or more.

<b>Annual turnover of RWA</b>	<b>Monthly maintenance charge</b>	<b>Whether exempt?</b>
More than ₹ 20 lakhs	More than ₹ 7,500	No
	₹ 7,500 or less	Yes
₹ 20 lakhs or less	More than ₹ 7,500	Yes
	₹ 7,500 or less	Yes

<p>Is the RWA entitled to take ITC of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than ₹ 7,500/- per month per member?</p>	<p>RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.</p>
<p>Where a person owns 2 or more flats in the housing society/residential complex, whether the ceiling of ₹ 7,500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?</p>	<p>Normally, a person who owns 2 or more residential apartments in a housing society/residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. <b><u>The ceiling of Rs. 7,500/- per month per member shall be applied separately for each residential apartment owned by him.</u></b></p> <p>Example: If a person owns 2 residential apartments in a residential complex and pays Rs. 15,000/- per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7,500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.</p>

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**[Circular No. 109/28/2019 GST dated 22.07.2019]**

**Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India**

Services provided by educational institutions to its students, faculty and staff are **exempt only** when such institution falls under the definition of educational institution provided under the exemption notification. Educational institution has been defined to mean an institution providing services by way of education as a part of a curriculum for obtaining a qualification/degree **recognized by law.**

It has been clarified that **Maritime Training Institutes** and their training courses are approved by the Director General of Shipping which are **duly recognised under the provisions of the Merchant Shipping Act, 1958**. Therefore, Maritime Training Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST subject to fulfilment of other prescribed conditions. **[Circular No. 117/36/2019 GST dated 11.10.2019]**

**Clarification on the effective date of insertion of explanation in notification**

Section 11(3) provides that the Government may insert an explanation in any notification issued u/s 11, for the purpose of clarifying its scope or applicability, at any time within 1 year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.

It is clarified that the explanation having been inserted u/s 11(3) of the CGST Act, is effective from the inception of the entry in notification and not from the date from which the notification (that inserted said explanation) becomes effective

**Example:** What is the effective date of explanation u/s 11? Online Study (cma.studynotes365.xyz)

- ✚ Principal N/No. 11/2017 CT (R) dated 28.06.2017 came into force w.e.f. 01.07.2017
- ✚ New entry is inserted w.e.f. 21.09.2017.
- ✚ Explanation is also inserted with respect to that entry on 26.07.2018.

**Solution:**

The effective date mentioned in the notification which inserted said explanation is 27.07.2018. The said explanation will be effective from the inception of entry in notification i.e. 21.09.2017 and not 27.07.2018. **[Circular No. 120/39/2019 GST dated 11.10.2019]**

## 4. INPUT TAX CREDIT

**Restriction on availment of ITC in respect of invoices/debit notes not uploaded by the suppliers in their GSTR-1s [New sub-rule (4) inserted in rule 36 of the CGST Rules]**

ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in GSTR-1, cannot exceed 20% of the “eligible credit” available in respect of invoices / debit notes the details of which have been uploaded by the suppliers in GSTR-1. [Rule 36(4)]

Case	Amount of ITC to be claimed by recipient
Where invoice/debit note <b>has been uploaded</b> by the supplier in his GSTR-1	Full ITC, if all other conditions of availing ITC are fulfilled
Where invoice/debit note <b>has not been uploaded</b> by supplier in his GSTR-1	20% of eligible ITC available in respect of the <b>uploaded</b> invoices/debit notes. However, the ITC so claimed should not exceed the actual eligible ITC available in respect of the invoices not uploaded

**[Notification No. 49/2019 CT dated 09.10.2019]**

### Illustration I

Mr. Vijay, a registered supplier, receives 100 invoices (for inward supply of goods/ services) involving GST of ₹ 10 lakh, from various suppliers during the month of October.

Compute the ITC that can be claimed by Mr. Vijay in his GSTR-3B for the month of October to be filed by 20<sup>th</sup> November in the following independent cases assuming that GST of ₹ 10 lakh is otherwise eligible for ITC.

#### Case I:

Out of 100 invoices, 80 invoices involving GST of ₹ 6 lakhs have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefore.

**Solution:**

ITC to be claimed by Mr. Vijay in his GSTR-3B for the month of October to be filed by 20th November will be computed as under-

<b>Invoices</b>	<b>Amount of ITC involved (₹)</b>	<b>Amount of ITC can be availed (₹)</b>
In respect of 80 invoices uploaded in GSTR-1	6 lakhs	6 lakhs [Refer Note 1 below]
In respect of 20 invoices not uploaded in GSTR-1	4 lakhs	1.2 lakhs [Refer Note 2 below]
<b>Total</b>	<b>10 lakhs</b>	<b>7.2 lakhs</b>

**Notes:**

- 1) In respect of invoices **uploaded** by the suppliers in their GSTR-1, **full ITC** can be availed.
- 2) The ITC in respect of invoices **not uploaded** has to be **restricted to 20% of eligible ITC** in respect of invoices uploaded in GSTR-1. Thus, in respect of 20 invoices not uploaded in GSTR-1s, the ITC has been restricted to ₹ 1.2 lakh [20% of Rs. 6 lakhs].

**Case II:**

Out of 100 invoices, 75 invoices involving GST of ₹ 8.5 lakh have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefore.

**Solution:**

ITC to be claimed by Mr. Vijay in his GSTR-3B for the month of October to be filed by 20th November 20XX will be computed as under-

<b>Invoices</b>	<b>Amount of ITC involved (₹)</b>	<b>Amount of ITC can be availed (₹)</b>
In respect of 75 invoices uploaded in GSTR-1	8.5 lakhs	8.5 lakhs [Refer Note 1 below]
In respect of 25 invoices not uploaded in GSTR-1	1.5 lakhs	1.5 lakhs [Refer Note 2 below]
<b>Total</b>	<b>10 lakhs</b>	<b>10 lakhs</b>



**Notes:**

- 1) In respect of invoices **uploaded** by the suppliers in their GSTR-1, **full ITC** can be availed.
- 2) The ITC in respect of invoices **not uploaded** has to be restricted to 20% of eligible ITC in respect of invoices uploaded in GSTR-1. However, since in this case, the actual ITC [Rs. 1.5 lakh] in respect of 25 invoices not uploaded in GSTR-1 **does not exceed 20% of the eligible ITC** in respect of invoices uploaded in GSTR-1s [₹ 1.7 lakh (20% of Rs. 8.5 lakh)], actual amount of ITC can be availed.

**Circular No. 123/42/2019– GST dated 11 November 2019 clarifying Rule 36(4)**

Issues	Clarification
What are the invoices / debit notes on which restriction u/r 36(4) shall apply?	<p>The restriction of availment of ITC is imposed <b>only</b> in respect of those invoices / debit notes, details of which are required to be uploaded by the suppliers u/s 37(1) <b>and which have not been uploaded.</b></p> <p>Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of u/s 37 (1), provided that eligibility conditions for availment of ITC are met.</p> <p><b>The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09.10.2019.</b></p>
Whether the said restriction is to be calculated supplier wise or on consolidated basis?	<p><b>The restriction imposed is not supplier wise.</b> The credit available u/r 36(4) is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers.</p> <p>Further, the calculation would be based on only those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provision (say u/s 17(5)) would not be considered for calculating 20% of the eligible credit available.</p>

<p>FORM GSTR-2A being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of invoices / debit notes whose details have not been uploaded by the suppliers?</p>	<p>The amount of input tax credit in respect of the invoices / debit notes whose details have not been uploaded by the suppliers shall not exceed 20% of the eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers u/s 37(1) as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period. <b><u>The taxpayer may have to ascertain the same from his auto populated FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 u/s 37(1).</u></b></p>
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<p>How much ITC a registered tax payer can avail in his FORM GSTR-3B in a month in case the details of some of the invoices have not been uploaded by the suppliers u/s 37(1)</p>	<p>Rule 36(4) prescribes that the ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under u/s 37(1), shall not exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers u/s 37(1).</p>
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Say a taxpayer "R" receives 100 invoices (for inward supply of goods or services) involving ITC of ₹ 10 lakhs, from various suppliers during the month of Oct, 2019 and has to claim ITC in his FORM GSTR-3B of October, to be filed by 20th Nov, 2019.

Cases	Details of suppliers invoices for which recipient is eligible to take ITC	20% of eligible credit where invoices are uploaded	Eligible ITC to be taken in GSTR-3B to be filed by 20 <sup>th</sup> Nov
1	Suppliers have furnished in FORM GSTR-1 80 invoices involving ITC of ₹ 6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers	₹ 1,20,000/-	₹ 6,00,000 (i.e. amount of eligible ITC available, as per details uploaded by the suppliers) + ₹ 1,20,000 (i.e. 20% of amount of eligible ITC available, as per details uploaded by the suppliers) = ₹ 7,20,000/-

<b>2</b>	Suppliers have furnished in FORM GSTR-1 80 invoices involving ITC of ₹ 7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers	₹ 1,40,000/-	₹ 7,00,000 + ₹ 1,40,000 = ₹ 8,40,000/-
<b>3</b>	Suppliers have furnished in FORM GSTR-1 75 invoices involving ITC of ₹ 8.5 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers	₹ 1,70,000/-	₹ 8,50,000/- + ₹ 1,50,000* = ₹10,00,000

\*The additional amount of ITC availed shall be limited to ensure that the total ITC availed does not exceed the total eligible ITC.

**When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of rule 36(4)?**

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- + The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers.
  - + He can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not uploaded (u/s 37(1)) remains under 20% of the eligible input tax credit, the details of which are uploaded by the suppliers.
  - + Full ITC of balance amount may be availed, in present illustration by “R”, in case total ITC pertaining to invoices the details of which have been uploaded reaches ₹ 8.3 lakhs (₹ 10 lakhs /1.20).
  - + In other words, taxpayer may avail full ITC in respect of a tax period, as and when the invoices are uploaded by the suppliers to the extent **Eligible ITC / 1.2**.

The same is explained for Case No. 1 and 2 of the illustrations provided above

<b>Case 1</b>	<i>“R” may avail balance ITC of Rs. 2.8 lakhs in case suppliers upload details of some of the invoices for the tax period involving ITC of Rs. 2.3 lakhs out of invoices involving ITC of Rs. 4 lakhs details of which had not been uploaded by the suppliers. [Rs. 6 lakhs + Rs. 2.3 lakhs = Rs. 8.3 lakhs]</i>
<b>Case 2</b>	<i>“R” may avail balance ITC of Rs. 1.6 lakhs in case suppliers upload details of some of the invoices involving ITC of Rs. 1.3 lakhs out of outstanding invoices involving Rs. 3 lakhs. [Rs. 7 lakhs + Rs. 1.3 lakhs = Rs. 8.3 lakhs]</i>

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## 5. REGISTRATION

**Bank Account details may be furnished after obtaining registration certificate [New rule 10A inserted and rule 21 of the CGST Rules amended]**

- + A person was required to furnish the details of his bank account during applying for registration. This requirement has now been relaxed to a limited extent, by inserting a new **Rule 10A**.
- + This relaxation is not available for those who have been granted registration as TDS deductor/ TCS collector u/r 124 or who have obtained suo-motu registration u/r 16.
- + A registered person has an **option** to give his bank account details after obtaining registration, **within 45 days** from the date of grant of registration or the due date of furnishing return, whichever is earlier.
- + If a person **violates** the provisions of rule 10A, his GST registration is liable to be cancelled [Rule 21]. [Notification No. 31/2019 CT dated 28.06.2019]

**Meaning of “not making taxable supply during suspension of registration” clarified registered person required to issue revised tax invoice and file first return for supplies during suspension period [Rule 21A of the CGST Rules]**

- + Once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, his registration shall remain **suspended** during pendency of the proceedings relating to cancellation of registration filed.
- + Such person **shall not make any taxable supply** during the period of suspension and shall not be required to file any return.
- + An explanation has been inserted in rule 21A to clarify the expression “shall not make any taxable supply” to mean that **the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.**

- ✚ Where any order having the effect of revocation of suspension of registration has been passed, the provisions of revised tax invoices [Section 31(3)(a)] and first return [Section 40] in respect of the supplies made during the period of suspension and the procedure specified therein shall apply. **[Notification No. 49/2019 CT dated 09.10.2019]**

## 6. TAX INVOICES, CREDIT & DEBIT NOTES

*Special provisions pertaining to tax invoice for services by way of admission to exhibition of cinematograph films in multiplex screens [Rule 46 and 54 of the CGST Rules]*

- ✚ The option to issue **consolidated tax invoice** subject to prescribed conditions, to a supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens is **disallowed now**.
- ✚ A registered person who is supplying services by way of admission to **exhibition of cinematograph films in multiplex screens** shall be required to issue an electronic ticket. The said **electronic ticket is deemed to be a tax invoice**, even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned u/r 46.
- ✚ Moreover, supplier of such services in a screen other than multiplex screens also has been given an option to follow above procedure. **[Notification No. 33/2019 CT dated 18.07.2019]**

## 7. ACCOUNTS & E-WAY BILL

**Validity of e-way bill in case of multimodal shipment in which at least one leg involves transport by ship [Rule 138(10) of the CGST Rules]**

<b>Distance within country</b>	<b>Validity period from relevant date</b>
<b>Upto 100 km</b>	<b>One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship</b>
<b>For every 100 km or part thereof thereafter</b>	<b>One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship</b>
<b>Upto 20 km</b>	<b>One day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship</b>
<b>For every 20 km or part thereof thereafter</b>	<b>One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship</b>

The validity of the e-way bill can be extended within eight hours from the time of its expiry. [Notification No. 31/2019 CT dated 28.06.2019]

## 8. RETURNS

**Form GSTR-3B to be treated as a return furnished under section 39 of the CGST Act [Rule 61(5) of the CGST Rules]**

Where the time limit for furnishing of details in Form GSTR-1 u/s 37 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify the manner and conditions subject to which the return shall be furnished in Form GSTR-3B.

The said rule has been amended **retrospectively with effect from 01.07.2017**, to specify that **Form GSTR-3B is the return u/s 39(1)** and that where GSTR-3B is furnished by a person then such person shall not be required to furnish the return in Form GSTR-3. [Notification No. 49/2019 CT dated 09.10.2019]

**Filing of annual return u/s 44(1) for FY 2017-18 & 2018-19 made optional for small taxpayers whose aggregate turnover is less than ₹ 2 crores and who have not filed the said return before the due date**

Filing of annual return (GSTR- 9) u/s 44(1) of CGST Act r/w rule 80(1) in respect of FY 2017-18 & 2018-19, **has been made voluntary** for the registered persons whose **turnover is less than ₹ 2 crore** and who have not furnished the said annual return before the due date. The annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date. [Notification No. 47/2019 CT dated 09.10.2019].

**Circular No. 124/43/2019 – GST dated 18 November 2019**

It is clarified that the tax payers under composition scheme, may, at their own option file FORM GSTR-9A for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of FORM GSTR-9A for the said period.

It is clarified that every registered person other than an Input Service Distributor, a person paying tax u/s 51 or 52, a casual taxable person and a non-resident taxable person, may, at their own option file FORM GSTR-9 for the said financial years before the due date. **After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of FORM GSTR-9 for the said period.**



Section 73 of the said Act provides for voluntary payment of tax dues by the taxpayers at any point in time. It is clarified that if any registered taxpayer, during course of reconciliation of his accounts, notices any short payment of tax or ineligible availment of input tax credit, he may pay the same through **FORM GST DRC-03**. [This is irrespective of the time and quantum of tax short paid or unpaid]

**Person supplying online information technology and database access retrieval [OIDAR] services not required to furnish annual return and reconciliation statement**

The Government has notified the persons compulsorily registered u/s 24(xi) of the CGST Act r/w rule 14 of CGST Rules supplying OIDAR services from a place outside India to a person in India, other than a registered person, as the class of registered persons who shall **not be required to furnish -**

- (i) Annual return u/s 44(1) of the CGST Act r/w rule 80(1) of the CGST Rules, and
- (ii) Reconciliation statement u/s 44(2) of the CGST Act r/w rule 80(3) of the CGST

Rules

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**[Notification No. 30/2019 CT dated 28.06.2019]**

**Other Amendments applicable only for CS & CMA Inter students appearing for June 2020 exams onwards**

## 9. PLACE OF SUPPLY

### **Double taxation of supply of a service [Section 13(13)]**

In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the **place of supply shall be the place of effective use and enjoyment of a service**. Notification No. 4/2019 – IGST dated 30/09/2019 notifies following services in this regard.

<b>Description of service</b>	<b>Place of supply</b>
<p>Supply of research and development services related to pharmaceutical sector by a person located in taxable territory to a person located in the non-taxable territory</p> <p>a) Integrated discovery and development            b) Integrated development            c) Evaluation of efficacy of new chemical/ biological entities in animal models of disease            d) Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays            e) Drug metabolism and pharmacokinetics of new chemical entities            f) Safety Assessment/ Toxicology            g) Stability Studies            h) Bio-equivalence and Bioavailability Studies            i) Clinical trials            j) Bio analytical studies</p>	<p>The place of supply of services shall be the <b>location of the recipient</b> of services subject to fulfilment of the following conditions:</p> <p>(i) Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory.</p> <p>(ii) Such supply of services fulfills all other conditions in the definition of export of services, <b>except the fact that place of supply is outside India</b> [Section 2(6)(iii) of IGST Act, 2017]</p>

### Clarification regarding determination of place of supply in certain cases

The CBIC has clarified certain issues relating to determination of place of supply in following cases:

- (i) **Services provided by Ports** - place of supply in respect of various cargo handling services provided by ports to clients

**Clarification:** It is hereby clarified that such services are ancillary to or related to cargo handling services and are **not related to immovable property**. Accordingly, the place of supply of such services will be determined u/s **12(2)** or u/s **13(2)** of the IGST Act, depending upon the terms of the contract between the supplier and recipient of such services.

- (ii) **Services rendered on goods temporarily imported in India** - place of supply in case of services rendered on unpolished diamonds received from abroad, which are exported after cutting, polishing etc.

**Clarification:** Place of supply in case of performance-based services is to be determined u/s 13(3)(a) of the IGST Act and generally the place of services is where the services are actually performed.

But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process. In case of cutting and polishing activity on unpolished diamonds which are **temporarily imported into India are not put to any use in India**, the place of supply would be determined u/s **13(2)** of the IGST Act. **[Circular No. 103/22/2019 GST dated 28.06.2019]**

**Clarification regarding determination of place of supply in case of software/ design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry**

*Issue: How should the place of supply be determined in case of supply of software/design services by a supplier located in taxable territory to a service recipient located in non-taxable territory by using the sample hardware kits provided by the service recipient?*

**Clarification:**

- + The question arose whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of “goods required to be made physically available by the recipient to the provider”.
- + It is observed that in contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider.
- + The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. **The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation**

It is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient u/s 13(2) of the IGST Act. Section 13(3)(a) shall not apply. [Circular No. 118/37/2019 GST dated 11.10.2019]

### Transition plan with respect to J&K reorganization w.e.f. 31<sup>st</sup> October 2019

The Government, on the recommendations of the Council, notifies following persons as the class of persons who shall follow the prescribed special procedure of transition till 31/12/2019 (“transition date”)

- + Persons whose principal place of business or place of business lies in the **erstwhile** State of Jammu and Kashmir till 30/10/2019; and
- + lies in the Union territory of Jammu and Kashmir / Ladakh from 31/10/2019 onwards.

**Prescribed procedure** is mentioned hereunder:

- 1) Ascertain the tax period for the purposes of any of the provisions of the said Act for the month of October, 2019 and November, 2019 as below:
  - (a) October, 2019: 1<sup>st</sup> October, 2019 to 30<sup>th</sup> October, 2019;
  - (b) November, 2019: 31<sup>st</sup> October, 2019 to 30<sup>th</sup> November, 2019;
- 2) Irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from 31<sup>st</sup> October, 2019 till the transition date, pay the appropriate applicable tax in the return u/s 39 of the said Act;
- 3) Have an option to transfer the ITC from the registered GSTIN, till the 30/10/2019 in the State of Jammu and Kashmir, to the new GSTIN in the Union territory of Jammu and Kashmir or in the Union territory of Ladakh from the 31/10/2019 by following the procedure as below:
  - a) Intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, **within one month** of obtaining new registration;
  - b) ITC shall be transferred on the basis of ratio of turnover of the place of business in the Union territory of Jammu and Kashmir and in the Union territory of Ladakh;
  - c) the transfer of ITC shall be carried out through the return u/s 39 of the said Act for any tax period before the transition date and the transferor GSTIN would be debiting the said ITC from its electronic credit ledger in FORM GSTR-3B and the transferee GSTIN would be crediting the equal amount of ITC in its electronic credit ledger in FORM GSTR-3B.

**Other points to remember:**

- ✚ The balance of SGST in electronic credit ledger of the said class of persons, whose principal place of business lies in the Union territory of Ladakh from the 31/10/2019, shall be transferred as balance of UTGST in the electronic credit ledger.
- ✚ Section 24(i) **shall not apply** on the said class of persons making inter-State supplies between the Union territories of Jammu and Kashmir and Ladakh from the 31/10/2019 till the transition date. [Notification No. 62/2019 – Central Tax dated 26/11/2019]

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