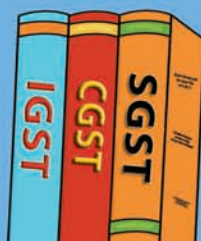




ICAI-GST

NEWSLETTER

A Newsletter from The Institute of Chartered Accountants of India on GST



President's Communication



Esteemed professional colleagues,

GST aims at unifying the economy of the country into a common market by eliminating inter-state barriers to trade in goods or services. The much awaited tax reform will minimize the adverse impact on the common man without affecting the quantum of government revenues.

The GST Council, in its meeting held on 18th and 19th May, 2017 has approved seven more draft Rules on various aspects of GST and related forms viz, Rules on Composition, Valuation, Input Tax Credit, Invoice Debit & Credit Notes, Payment, Refund, and Registration. GST Council also approved chapter containing rate schedule for goods and services as well as the GST compensation cess rates and notified services on which reverse charge applies.

Now, it seems that the countdown for implementation of GST has begun and State Governments are also keen to implement the GST Act from 1st July, 2017 which is reflected in the fact that twenty States/UTs have already passed their respective SGST Act in their assembly as on date.

ICAI, being a partner in Nation building has always been at the service of the nation. ICAI has always committed and played its part in better governance and has been regularly providing its inputs to the Government in the

implementation of GST. Further, to assist the government, ICAI has decided to open almost 200 ICAI GST Sahayata Desks at various Regional Council/Branches/ CPE Chapters of ICAI which would be operational till 30th September, 2017 to render pro bono advice on various implementation aspects of GST to small manufacturers/ businessman/ representatives of trade & industry.

I am pleased to inform you that the Indirect Taxes Committee of ICAI has recently come out with publication titled "FAQs and MCQs on GST" which provides a comprehensive coverage on GST for easy understanding and helps the reader to easily comprehend the emerging law. The soft copy of the publication is available at the committee website.

These steps would help ICAI to live upto its commitment of partnering in this nation building initiative and support the government with smooth implementation of GST.

Lets join hands to support in this game changing initiative of the Nation.

With best wishes,

CA. Nilesh S. Vikamsey

President, ICAI

25 May 2017



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GST UPDATES

APPROVED GST RATES FOR GOODS

The GST Council in its 14th meeting held on 18th May, 2017 has broadly approved the GST rates for goods at nil rate, 5%, 12%, 18% and 28% to be levied on 1,206 items. The decision regarding rate of tax on remaining 6 items viz. Gold, Bidis, Textile, Footwear, Agricultural implements and Packaged/Branded food items would be taken up in the upcoming meeting of GST Council. Rates of few important goods are as under:

Tax Rate	Product
Nil	Live animal, Milk, curd, lassi, butter milk, Fresh vegetables, Fresh fruits (other than in frozen state), Cereals (other than bearing a registered brand name), Flour, Aata, Maida, Besan (other than bearing a registered brand name), Pappad and bread (branded or not), Prasadam supplies by religious place, Coconut powder, Water [other than aerated mineral purified distilled), Common Salt, Human blood, Organic manure, Kumkum, sindur, bindi, alta, clinical waste, Plastic bangles, Printed books, Passenger bags.
5%	Yogurt, Fresh fruits in frozen state, Coffee, tea, Vegetable fats and oils, Khandsari sugar, Pizza bread, seviyan, Rusks, Tobacco leaves, Salt other than common salt, Ores and concentrates (e.g. Iron, copper, nickel, cobalt etc.), Handmade safety matches, Vaccines, Brochures, leaflets, Broomsticks and Muddhas.
12%	Live horses, Frozen meat in unit containers, Butter, ghee and cheese, Dry fruits, Fruit Juice, fruit juice based drinks, Ice and snow, Marble block, granite block, Iodine, Candles, photographic plates and films for x ray for medical use, Tractors, bicycles, Children's picture, drawing or colouring books, Fertilizers, fountain pen ink, ball pen ink, Tooth powder, aggarbati, Feeding bottles, Umbrella, Utensils, Tables or kitchen or other household articles, Telephones for cellular networks, Sports goods.
18%	Refined sugar, Pasta, corn flakes, pastries and cakes, Instant tea, tea aroma, Sauces, Soups, Ice cream, Sharbat, Supari, Ethyl alcohol, Vinegar, Hair oil, Soap, Insecticides, rodenticides, herbicides Electric motors and generators, Electronic Toys like tricycles, scooters.
28%	Molasses, Chewing gum, bubble gum and white chocolate, Custard powder, Pan masala, Aerated waters, Marble and granite other than block, Perfumes, beauty or make-up preparations, shampoo, hair cream, Tooth paste, Fireworks, Cars.

The Council has also broadly approved the rates of GST Compensation Cess to be levied on certain goods such as Pan Masala, Aerated water, Tobacco and Tobacco Product, Cigarettes, Motor Vehicles etc. to compensate the States for loss of revenue.

APPROVED GST RATE FOR SERVICES

On 19th May, 2017 GST council also finalized four tax rates for services in line with goods at nil rate, 5%, 12%, 18% and 28% for services including telecom, insurance, hotels and restaurants. Health care and education would remain exempted under the GST. Broadly all services presently covered under Negative List and Mega Exemption Notification are kept under exemption. Rates for few important services are as follows:

Tax Rate	Condition	Nature of Service
5%	With ITC of input service	Goods transport by rail, passenger transport by rail (other than sleeper class), Transport of goods in a vessel from place outside India to custom station, Passenger by air in economy class (in normal airport), Passenger by air in regional connectivity scheme airport, Leasing of aircrafts (scheduled airlines + scheduled operation)
	Without ITC	GTA for goods and used household goods, Renting of Motorcab, passengers transport by AC contract/ stage carriage (other than motorcab) and radio taxi, tour operator
	With full ITC	Advertisement in print media, Job work in relation to printing of newspaper
12%	With ITC of Input Service	Foreman of chit fund
	With full ITC	Goods transport in containers by rail by any person other than Indian Railways, Passenger transport by air (other than economy), Restaurant (NON AC+ No license to serve liquor), Hotel (room tariff-Rs 1000 and above but less than 2500 per room per day), Construction service (value of land included)*, Transfer of intellectual property (no right to use) <i>*no refund of overflow of ITC</i>

18%	With full ITC	Restaurant having AC or serving liquor, outdoor catering, Hotel (room tariff more than Rs 2500 above and less than Rs 5000 per room per day), Bundle of food/drinks along with shamiana, pandal, Admission to circus, Indian classical dance, theatre, drama, Composite works contract, All services not specified elsewhere (Residuary entry)
28%	With full ITC	Admission to entertainment/amusement facility, Service by race club, Gambling, AC Restaurant in 5 star or above rated hotel, Hotel(room tariff above Rs. 5000 per night per room)
	No ITC	Renting of motor cab (if fuel cost borne by SR)
Same rate of GST & compensation cess as on supply of similar goods	With full ITC	Transfer of right to use goods(for those goods which attract same GST burden & compensation cess as on sale of goods), Transfer of right in goods or undivided share in goods w/o transfer of title (for those goods which attract same GST burden & compensation cess as on sale of goods), Transfer of title in goods in which property shall pass at a future date upon payment of full consideration (value of leasing service shall be included in value of goods supplied)

TAXATION OF SERVICES UNDER REVERSE CHARGE

GST Council has provided list of 12 services on which tax would be liable under Reverse Charge which include services like Services provided by GTA, Legal services to business entities, Radio taxi or Passenger Transport Services provided through

electronic commerce operator, services by a director of a company or a body corporate, import of services, etc. As of now, none of the services are covered under partial reverse charge.

SEVEN GST RULES FINALIZED

GST Council at its fourteenth meeting held on 18th May, 2017 approved the seven draft rules on GST viz. Composition, Input Tax Credit, Valuation, Invoice, debit and credit notes, Payment, Refund and registration.

SGST ACT PASSED BY 20 STATES

The steadily growing number of States passing the SGST Act shows that the even States are now keen to bring this unified taxation system into effect from 1st July, 2017. Till date, 20 states have passed the SGST Act wherein Nagaland & Himachal Pradesh are latest to join the league.

A NEW TWITTER HANDLE @ASKGST

The Department of Revenue, Ministry of Finance, Government of India has opened a new Twitter Handle @askGST_Gol to invite queries from all taxpayers on GST. All taxpayers and other stakeholders are welcome to direct their queries related to GST on the said twitter handle for early resolution and clarification. It may be noted that it is for educational purposes only.



ICAI GST SAHAYATA DESKS

ICAI has decided to open ICAI GST Sahayata Desks at various Regional Council/Branches/ CPE Chapters of ICAI, which would be operational till 30th September 2017 to facilitate small businessman, representatives of trade & industry and public at large.

CONVERSION OF GST MIGRATION SEVA KENDRAS INTO FULL-FLEDGED SEVA KENDRAS

GST Migration Seva Kendras will be converted into the full-fledged Seva Kendras so as to provide the entire gamut of taxpayer services for trade facilitation and hand holding.

VIRTUAL CERTIFICATE COURSE

To cater to the humongous demand for Certificate Course on GST the Indirect Taxes Committee has launched Virtual Certificate Course on GST. The basic objective of the course is to provide specialized and updated knowledge in the area of Goods & Services Tax in a systematic manner and enhance analytical and problem solving skills for decision making. Herein sessions would be organised like Live Telecasts wherein GST experts would deliberate upon scheduled topics with a facility of live query session. This one of its kind initiative would enable dissemination of GST knowledge through a single platform at various locations across the country. The schedule of the same is below: -

Date & Time (9.30am to 5.45pm)	
9th June, 2017	18th June, 2017
10th June, 2017	23rd June, 2017
11th June, 2017	24th June, 2017
16th June, 2017	25th June, 2017
17th June, 2017	30th June, 2017

Link to register for the same <http://idtc.icai.org/cc/virtual/student/>
Please contact your respective branch/ region to get this course scheduled!!!

ANTI-PROFITEERING IN GST- NECESSITY OR PARADOX

A. Introduction & Need of Anti-Profiteering Law

We are going to witness biggest indirect tax reform in the history of independent India. However, global trends suggest implementation of Goods and Service Tax or Comprehensive VAT on Goods & Services lead to inflationary conditions in short to medium term economy. Our country being highly price sensitive market, necessarily requires checking whether implementation of new taxation regime will lead to inflationary conditions or vice versa.

Since GST Council has already declared different slab rates to be adopted in GST and the government has declared that mapping of Goods and Services will be on the basis of existing effective industry rate. It is amply clear on the part of the government, that it is not looking to have higher revenue from GST by charging higher rate of tax on any goods or services. However, effect of increase in tax base, reduced grey economy, and increased GDP will certainly add to the revenue kitty.

Now question arises, why increased inflation be there despite the fact that effective tax rate on all products will be more or less at par with existing rates. It is because the effective rate of tax at the consumer level gets changed immediately at the time of implementation, whereas industry takes time to pass on benefit(s) accrues to it to the consumer level because of many reasons such as unawareness about benefits available, lack of clarity on interpretational issues etc. At times it may be intentional in monopolistic market whereby industry wants to increase its profit by maintaining its selling price and pocketing whole of the benefits.

The same situation arose at the time of implementation of VAT in India. Many industries parked gains accrued to them on account of implementation of Value Added Taxation system and maintained prices till the time they were virtually certain about the final impact of VAT on overall profitability. After implementation of VAT, Comptroller and Auditor General of India conducted a national study on 'Implementation of Value added Tax in India' and released Study Report named 'Lessons for transition to Goods and Services Tax' in June 2010. Relevant extracts from the report are as under:

Impact of VAT on prices:

The white paper was sanguine that implementation of VAT will bring down the prices of goods due to rationalization of tax rates and abolition of cascading tax effects in the legacy systems. But there was no system to monitor this impact and ensure that the benefits were indeed being passed on to the common man.

We selected a basket of goods and checked the records of 13 manufacturers in a state in three initial months of implementation of VAT, to check its impact on prices. We found that manufacturers did not reduce the maximum retail prices (MRP) after introduction

of VAT though there was substantial reduction of tax rates. The benefit of Rs. 40 Crore which should have been passed on to the consumer was consumed by the manufacturer and the dealers across the VAT chain. The dealers have undoubtedly enriched themselves at the cost of the common man."

History, as observed by CAG, will repeat again if no legal deterrent is there. Let us understand this preposition with an illustration in case of a Trader who purchased goods from a manufacturer:

Cost Sheet in Existing Tax Regime:

Description	Amount (INR)
Purchase Price of Goods (A)	1,00,000
Excise Duty on Inputs @ 12.50% (B)	12,500
Value Added Tax @ 5.50%	6,188
Total Purchase Price	1,18,688
Operational Exp. (Business Consumables & Services) (C)	1,000
Tax on Operational/ Indirect Exp. (D)	150
Total Cash Outflow	1,19,838
Sales Price for the dealer (E)	1,25,000
Output Tax (VAT @ 5.50%)	6,875
Total Cost to Consumer	1,31,875
Profit of Dealer (E – A – B – C – D)	11,350
Total tax which govt. has received (CG + SG)	19,525

Cost Sheet in GST Regime (If consumer prices don't change):

Description	Amount (INR)
Purchase Price of Goods (A)	1,00,000
GST	18,000
Total Purchase Price	1,18,000
Operational Exp. (Business Consumables & Services) (B)	1,000
Tax on Operational/ Indirect Exp.	180
Total Cash Outflow	1,19,180
Sales Price for the dealer (C)	1,25,000
GST	22,500
Total Cost to Consumer	1,47,500
Profit of Dealer (C – A – B)	24,000
Total tax which govt. has received (CG + SG)	22,500

It is evident from above illustration, that if the prices of the products are not adjusted for the benefits accrued to the supplier,

the consumers are going to pay higher price for goods and services and situation will lead to inflationary conditions. In the given case by implementation of GST the dealer is getting benefit of excise duty on goods and VAT/ Service Tax on operational expenses, which he should ideally pass on to the consumer. In the illustration cited above (which is in line with study report of CAG), the dealer has not passed on any benefit to the consumer which results in increased cost to consumer and profits of the dealer increased to more than double. This is example of profiteering by dealer due to change in taxation regime and has to be regulated in new indirect tax regime.

B. Legal Provisions for Anti Profiteering in CGST Act & Analysis thereof

Sec. 171 of the CGST Act;

“1. Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.”

“2. The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.”

“3. The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed”

The first part Sec. 171(1) casts responsibility to pass on benefit of GST to recipient for following two aspects:

a. For any rate reduction in new tax regime:

As regards passing of benefit due to rate reduction, in case of supplies exclusive of tax there should not be a big challenge, since reduction in tax rate will directly be evidenced by invoices and the recipient will get benefit of the rate reduction. However, in case where contract of supplies is inclusive of taxes, this provision will cast responsibility on the supplier to reduce the price due to reduction in rate of taxes. For example, FMCG items which are normally sold on MRP basis or some other fixed prices by retailers, if there is any reduction in rate of tax it has to be passed on to the ultimate recipient. Accordingly, there shall be need to revise MRP or other prices fixed for such supplies.

b. For any benefit of Input tax Credit:

As regards passing of benefit due to better credit chain, it is going to affect almost all industries. In most places, be it service sector, manufacturing, trading or any specific industry, all are going to get advantage of better flow of Input Tax Credit. So the expectation of the provisions are commensurate reduction in prices of supplies. If we apply this principal in plain reading to the above illustration, we can reframe it as under:

Cost Sheet in GST Regime (If no one profiteer itself, on account of taxes):

Description	Amount (INR)
Purchase Price of Goods (A)	1,00,000
GST	18,000
Total Purchase Price	1,18,000
Operational Exp. (Business Consumables & Services) (B)	1,000
Tax on Operational/ Indirect Exp.	180
Total Cash Outflow	1,19,180
Sales Price [Cost (A+B) + plus existing margin] (C)	1,12,350
GST	20,223
Total Cost to Consumer	1,32,573
Profit of Dealer (C – A – B)	11,350
Total tax which govt. has received (CG + SG)	20,223

Comparison of three scenarios:

Description	Existing Provisions	GST (Without adjusting prices)	GST (Without Profiteering)
Cost to Consumer	1,31,875	1,47,500	1,32,573
Profit of Dealer	11,350	24,000	11,350
Total Govt. Taxes	19,525	22,500	20,223

After going through the comparison of three scenarios, it is evident that adequate reduction in prices is essential for success of biggest indirect tax reform of the country. Accordingly it is need of the hour that industry suo-moto reduces prices of goods and services. However, if it doesn't do so, then legal provisions are there in place to take care of such situations. Introduction of this measure is required to curb the practice of pocketing the tax benefit, rather than passing it on to the ultimate consumer by way of real reduction in the price of supplies. That is why, despite lot of agitation from industry after release of revised model law in November 2016, the government maintained same provision in the CGST Bill too, which has already passed from both houses of the parliament, and has taken the shape of law of the land after signing from hon'ble President of India.

As of now Sec. 171 it is an enabling provision only in the enactment, which is to be followed by Rules made by central government. No draft rules have been put in public domain by the government to be discussed by the Industry for implementation & preparation on this provision.

C. International Practices & Indian Context

India is not the first country which is heading towards Comprehensive GST (VAT) with Anti-profiteering measure. Many

countries like Canada, New Zealand, Australia and Malaysia etc. have witnessed such measure while adopting Goods and Service Tax regime. Broadly, as per overseas experience, the impact of Anti-profiteering law was troublesome for the industry. Accordingly, India needs to learn from experiences of others while imposing anti profiteering measures in the Indian Economy.

Recently, Malaysia had adopted Goods and Services Tax in 2015, whereby they brought Anti Profiteering provisions for GST through their existing legislation called 'Price Control and Anti-profiteering Act 2011'. Amendment in the existing legislation was done through amendment act of 2014 whereby main operating provisions read as under:

"Sec. 15(1A) The mechanism to determine that profit is unreasonably high referred to in subsection (1) includes the Minister determining a certain period during which there shall be no increase in the net profit margin of any goods or services."

Further, Part II and Part III of Schedule to Price Control and Anti Profiteering (Mechanism to Determine Unreasonably High Profit) (Net Profit Margin) Regulations 2014 had prescribed mechanism to calculate net profit margin pre-and post Goods and Service Tax regime respectively. After that both had to be compared in order to make sure that there is no increase in net profit margin post GST implementation.

In Australia too, the Anti Profiteering measures were effected through amendment in existing legislation called "Australia competition and Consumer Act 2010". Whereby Sec. 44ZZT had been added to impose restriction as regard to anti profiteering on class of Goods and services.

Further, In India, The Competition Act, 2002 was enacted with following objectives as mentioned in section 18:

- Elimination of Practices having adverse effect on competition
- Protection of interest of consumers
- Promotion and sustainability of competition
- Ensuring Freedom of trade among participants in the Indian Markets

Competition Commission of India (CCI) was duly constituted under the Competition Act to take due care of above mentioned objectives of the said enactment. Objectives of the CCI is more or less at par with objectives of proposed Anti Profiteering law. Looking to the experience of handling similar nature of task, CCI may be entrusted as the competent authority under Sec. 171 of the CGST Act.

D. Applicability of Anti Profiteering provisions on Credit lying in Stock.

Sec. 140 of CGST Act allows taking credit of eligible duties in respect of inputs held in Stock and inputs contained in semi-finished or finished goods held in stock, for certain classes of registered persons

where such credit was not reflected in returns of respective law. By allowing carry forward of such credit to the registered person the government has ensured that such stock, when supplied in GST regime, will not suffer double burden of taxes and relevant benefit are passed to the registered person. Now question arises whether this benefit of credit has to be passed on to the consumer by way of reduction in price of supplies or not?

As discussed above, Sec. 171 is clearly applicable in two circumstances only. Firstly being reduction in rate of tax, which is not the case. Secondly being benefit of Input Tax Credit. The definition of 'Input Tax Credit' as provided in Sec. 2(63) read with Sec. 2(62) means CGST, SGST, UTGST & IGST charged on any supply of goods or services. The credit of eligible (old) taxes on stock carried forwarded in GST regime cannot be said to be input tax credit in the GST enactment. Therefore, it seems Sec. 171 will not cover such kind of credit and accordingly, benefit of such credit need not be passed on to the end customer.

It may be noted that in the Revised Model GST Law released in Nov 2016, there was a specific provision for passing on of such credit to the recipient, but the same is not there in CGST Act. It appears that government has withdrawn this condition in the final law, looking to the demand of industry and computational challenges, difficulties arising in verification that whether such credit has been passed on to the recipient or not.

However, if the credit of tax paid in stock is claimed under proviso to Sec. 140(3) read with Rule 1(3) of Draft Transitional Rules (i.e. where registered person doesn't have the document evidencing payment of tax or duty), it is necessary to pass on benefit of such credit to recipient by way of reduction in prices.

E. Issues & Challenges

1. Computational Mechanism

- a. Practically it is very difficult to establish one to one correlation between ITC on inward supplies and Tax payable on outward supplies. So ultimately it comes on margins or prices of supply. How the margins and prices are to be checked is a subjective matter. There may be various ways like:
 - Profit on product in absolute terms.
 - Profit percentage on Cost of product.
 - Profit percentage on Sale Price.
- b. Further apart from benefits in terms of better credit chain, the business organisations are going to incur huge cost for implementation of GST on account of installation of new IT systems, restructuring of operations, redesigning of SOP's, Compliances cost etc. Whether, the organisation can set off its gains in terms of better credit flow with its increased cost, before passing of the same to consumer. In other words, if rules prescribe for maintaining of margins,

whether the same is to be maintained on Cost of Product level, Gross Margin level, Operational Profit Level or Net Profit Level.

Industry should represent before government with its rationale and demands. However, one thing which has to be ensured that rules should be detailed enough so that there will be no discretion available to any authority which leads to corrupt practices.

2. Determination of Price.

One fact needs to be noted that prices and margins are not solely dependent on taxes. Rather they are only a component of price like any other components. Price determination depends on many factors such as:

- Internal factors:
 - o Cost of raw material or other component
 - o Predetermined objectives (Higher profit or higher revenue)
 - o Image of the Seller (Goodwill)
 - o Life cycle of the product (Initial level may be less priced or even free sample after that there may be increase in price)
 - o Credit period offered.
 - o Promotional activities (Heavy advertisement/ promotional exp.)
- External factors:
 - o Competition
 - o Consumers (price sensitivity & purchasing power of buyer)
 - o Government Control
 - o Economic Condition (Recession)
 - o Supply Chain (Longer the chain, higher would be the price)

Price determination of any product is most complex and continuous process, cycle of which depends on nature of product. If prices or margins are being freezed, on account of Anti Profiteering Measures, then it may lead to disastrous situation in many industries. Further, at times there may be strategic pricing for some products which the companies don't want to share with anyone including tax authorities.

3. Constitutional Challenges

a. Right to Free trade

Article 301 of our Constitution provides freedom of trade, commerce and intercourse throughout the territory of India. However, article 302 authorises parliament to Impose reasonable restrictions. Anti-Profiteering

provisions or restriction on profits of trade of all goods or services may be treated as violation of fundamental right of freedom of Trade, hence may be subject to judicial review.

b. Implication on State Tax/ Assesseees

It is pertinent to note that power to constitute authority u/s 171 is with central government only. Article 302 also authorises Parliament to impose such restrictions, whereas there are stringent conditions for state legislatures to impose such kind of restrictions under Article 304.

In such a scenario implementation of Anti Profiteering measures in respect of

- State Tax (i.e. SGST) administered by any Govt. OR
- Registered Persons, under State Jurisdiction for all taxes may be subjected to judicial review.

F. Conclusion

From consumers' point of view Anti Profiteering Provision is necessarily required to be there so as to ensure deserving benefits passed on to them. At the same time, looking at the issues and challenges before industry and the efforts involved in reworking of cost sheet and re-fixing of prices, it is advisable that

- a) A reasonable bandwidth for margin variation should be prescribed, say for example variation upto 10% of existing margins. If variation remains within such bandwidth, no registered person should face any penal consequences u/s 171 of the CGST Act.
- b) A threshold limit for turnover of taxable supplies may be prescribed, below which provision of sec. 171 shall not apply.
- c) Further for above threshold limit, detailed rules, covering all aspects including computation mechanism, documents to be maintained etc, should be prescribed so that no discretionary power is left in hands of any authority which in turn can cause harassment of the tax payer.



– Contributed by Jaipur Study group

GST- ISSUES IN REAL ESTATE SECTOR

Introduction

Currently, a Builder is subjected to numerous taxes such as VAT, service tax, entry tax, Octroi, LBT, CVD, SAD, etc. which come under the indirect tax net. The high level of compliances there-under and further the litigation involved therein has made the life of Builders difficult and burdensome. With the introduction of GST, major levies shall be subsumed into a single tax 'GST'; thereby putting to rest to old controversies.

The CGST, IGST, UTGST & SGST in some states have achieved finality with regard to provisions stated therein. In this article, a few important concepts pertaining to real estate sector and related issues have been dealt.

IMPORTANT CONCEPTS AND RELATED ISSUES

Levy

While 'post Occupancy Certificate Sale' by itself is not covered under the ambit of GST, sale of under construction flat shall attract GST. Attention is drawn to Section 7(1) (d) read with Item 5(b) of Schedule II to the CGST Act, 2017/SGST Act, 2017 which deals with taxability of under construction flats.

The above-mentioned item of Schedule II is a reproduction of declared service as present under current Service Tax regime **except for the words 'after its first occupation, whichever is earlier'** The said reading of the amended item of Schedule II may lead to a conclusion that even if the completion certificate has not been received by the builder, if first occupancy in the premises has been taken place, builders may not be required to charge GST if entire consideration is received after first occupation. This would come as a blessing for the builders who due to certain reasons are unable to get the completion certificate from the local authority. However, the expression 'first occupation' is not defined in the Act and therefore, will be a subject matter of interpretation and litigation in absence of any clarification by the Government.

Registration

The concept of centralized registration shall be done away with under the GST Regime. As per Section 22 of CGST Act/SGST Act every supplier shall be liable to be registered in the State or Union territory **'from where'** he makes taxable supply. Further, location of supplier is defined to include 'fixed establishment' which, in turn, is defined vide Section 2(50) of the CGST Act/SGST Act.

Usually, wherever construction is carried out, a site office or temporary office is formed so as to effectively manage the construction and store materials, etc. Accordingly, there are chances that such site offices may be said to be fixed establishments and services may be said to be deemed to be provided from such site offices.

Therefore, appropriate tax i.e. CGST & SGST or IGST (depending



upon place of supply rules) may be levied from each state from where taxable supply is made.

Rate

As per the GST council, rate of construction service is recommended to be 12% and that of works contract is 18%. It is well known concept that construction service is sub-set and species of works contract with addition of 'land' element to it. Therefore, it appears that the difference in rate of works contract and construction services is primarily on account of land deduction which ought to be available to a builder.

Input Tax Credit

Currently, under VAT & Service Tax regime numerous restrictions have been imposed on a Builder in order to claim the input credit resulting in significant loss of ITC. Under the GST Regime, a Builder shall be entitled to take ITC on inputs, input services & capital goods used in furtherance of business.

Section 17(5)(c) of the CGST Act/SGST Act provides for restriction of input tax credit on 'works contract services when supplied for construction of an immovable property (other than plant and machinery) **except where it is an input service for further supply of works contract service'**

A builder discharging 12% GST on construction service may not be in a position to take a stand that input services under the description of "works contract services" are used for **further supply of works contract service**. If that is the case, builder ought to pay GST at the applicable rate of works contract i.e. 18%. Therefore, in absence of any clarification, a builder discharging GST under construction service may not be entitled to ITC on input services under the description of "works contract service" ("such as civil works, tiling work, grilling work, lobby works, etc.)

Apart from the above, a few minor restrictions have been given under Section 17(5) of the CGST Act/SGST Act such as motor vehicles, rent-a-cab, personal use of goods/ services, etc. Further, second proviso to Section 16(2) of the CGST Act/SGST Act also provides for reversal of ITC in case payment to vendor is not made

within a period of 180 days from the date of issue of invoice by the supplier.

Further, Section 17(2) provides for restriction/ reversal of Input Tax Credit in case of supply of 'exempt supplies'. Section 17(3) gives the meaning of 'exempt supplies' and it appears that sale proceeds of land, flats sold post Occupancy Certificate may get covered under 'exempt supplies' and therefore may warrant for reversal of ITC claimed. The manner for reversal of ITC is prescribed in detailed manner under the Rule 7 and Rule 8 of ITC Rules, 2017.

Transitional provisions

Chapter XX of CGST Act/SGST Act provides for transitional provisions with respect to ITC under earlier laws. The carry forward of service tax credit does not appear to be an issue. However, with respect to VAT, State VAT Laws provide for composition scheme of 1%, 0.6%, etc. with a condition of not availing input tax credit. One will have to check the respective SGST Law in order to determine whether any provision for the same has been prescribed or not.

Further, one of the crucial aspects of transition is the excise duty, CVD, SAD suffered by the builder on its major components such as steel, cement, etc. In this regard, Section 140(3) of the CGST Act/SGST Act and proviso to Section 140(3) provides for availment of various duties on closing stock on appointed date (such as excise duty, CVD). As per Section 140(3), various conditions are imposed for availing such credit mainly possession of invoice and other prescribed documents which evidences payment of duty. A builder directly purchasing from a manufacturer or importer may be in possession of required documents and therefore may be in a position to avail the credit of excise, CVD, etc. A builder purchasing material from wholesaler, retailer may not be in a position to reproduce required documents and therefore such builders may not be in a position to claim the credit.

Without prejudice to the above and most importantly, Section 140(3) (v) provides that no abatement under GST Act should be availed. A builder (based on GST council's recommendation) will most likely be subjected to lower rate of 12% as against works contract rate of 18%. The moot question lies that whether prescription of lower rate of 12% is form of granting abatement or not? Prima facie it does not appear to be so and therefore even condition of Section 140(3) (v) stands fulfilled. However, if one takes a stand that the differential rate is form of abatement, builder may become ineligible to claim benefit under this transitory section.

Further, proviso to Section 140(3) envisages a situation for availing of credit of excise duty/ CVD, etc. where registered person is not in possession of duty paying document. However, the proviso restricts manufacturer and supplier of service from its ambit. Builder being a service provider would not fall under the said proviso and therefore in absence of required documents, he may not be able to carry forward the credit.

OTHER IMPORTANT ISSUES

Ongoing contracts

Another crucial aspect with relation to transitional provisions is issue relating to ongoing contracts. For example, service tax liability is discharged based on completion of services method i.e. as and

when milestones become due. Whereas, full VAT is paid based on agreement value or market value. Accordingly, in case of ongoing contracts, a situation may occur wherein full VAT is discharged but only part service tax is paid on the same flat. Accordingly, issue may arise as to proportion of payment of GST on such flats. Such issue is dealt with in Section 142(11) of the CGST Act/SGST Act wherein it has been provided that proportionate credit of full tax paid earlier may be available. However, it is advisable to check the applicable SGST Act for similar provisions in order to get the benefit of respective state VAT paid.

Floor Space Index (FSI)/Transfer of Development Rights (TDR)

FSIs/ TDRs used by the Builders are effectively rights in land and not land by itself. As per Schedule III of the CGST Act/SGST Act not all immovable properties are excluded from ambit of GST but just sale of land. Accordingly, there are chances that such transaction of sale of FSI/ TDR may attract tax under GST. However, according to another school of thought FSI/ TDRs may still be counted as 'part of Land' and therefore stands excluded from GST net.

Intellectual Property Rights

Schedule I of the CGST Act/SGST Act provides for levy of GST on supply of goods or services or both between related persons or distinct persons even when made without consideration. Usually in the Real Estate Sector, many entities of same group use single logo/ trademark without any consideration. Such transaction of IPR rights as well may come under the purview of GST in future by way of Schedule I.

Stock Transfers

Many times, stock of several items such as cement, steel is transferred from one site to another. GST warrants for levying GST on all supplies. Accordingly, inter-state stock transfers shall be liable to GST.

Barter Transactions

Many barter transactions are witnessed in Real Estate industry. For Example, giving away of free flats in lieu of 'development rights'. Many experts have been taking a stand under several state VAT laws that such barter transactions are not subjected to VAT on the basis of the term 'valuable consideration'. Further, the valuation of such transfers is also a burning issue under present service tax law. However, Section 7(1) (a) of CGST Act/SGST Act provides, amongst other things, for levy of GST on all forms of supply such as barter, exchange, etc. Therefore, GST shall be payable even in barter transactions. The value of supply shall be determined in accordance with GST (Determination of Value of Supply) Rules.

Anti-profiteering

Section 171 of CGST Act/SGST Act provides for commensurate reduction of prices based on benefit availed by way of introduction of GST such as reduction in rate of tax, benefit of ITC. The Rules in this regard as to the quantum of reduction, manner of reduction is not yet notified. Therefore, unless clarity is brought in this regard, the possibility of different practices being adopted in the Industry can not be ruled out. The aforesaid different practices shall lead to litigation.

— Contributed by Mumbai Group

TRANSITIONAL PROVISIONS RELATED TO STOCK IN HAND UNDER GST

Transitional Provisions related to Stock in hand under GST

While understanding the transitional provisions under GST, a repeated and imminent query which we are faced with is the treatment of CENVAT and VAT Credit in respect of stock held on 30th June 2017 which will be sold post 1st July 2017 i.e., after implementation of GST.

The treatment would depend on the nature of registration of the organisation under the present laws. In an attempt to bring clarity on this issue, an analysis is made in this article on case study basis.

- The following analysis is based on the assumption that GST will be effective from 1st July 2017.
- The discussion is only in respect of inputs and input services and not capital goods.
- The discussion does not cover VAT dealers paying tax under MRP Scheme.

Case 1: Manufacturer registered under Excise, VAT and Service Tax

- **Return filed under Excise, VAT or Service Tax shows outstanding/ excess/ unutilised balance of input tax credit**
 - The excess input tax credit reflected in the return filed for period ended 30th June 2017 to be carried forward under GST
 - GST FORM TRAN-1 to be filed by 29th August 2017
 - The GST FORM TRAN-1 to contain details about the credit to be carried forward
 - Excess CENVAT Credit (shown in Excise and Service Tax Return) shall be carried forward as CGST
 - Excess VAT Credit (shown in VAT Return) shall be carried forward as SGST
- **The balance is not allowed to be carried forward in following cases:**
 - The Credit is not admissible in the GST Law
 - All returns for 6 months have not been duly filed under the Excise, VAT, Service Tax Law
 - Credit relates to goods manufactured and cleared under exemption notifications as are notified by the Government
 - VAT Credit attributable to claims related to sales under Form C, F, E1, E2, H etc. not to be allowed unless the forms are duly made available
- **Return filed under Excise, VAT and Service Tax does not show outstanding balance of input tax credit**

Where the entire credit availed has been utilised and no outstanding, excess balance of credit is reflected in the return:

- No credit shall be carried forward under GST
- No requirement to file any detail with respect to the stock in GST FORM TRAN-1

Case 2: Manufacturer registered under Excise and VAT

- **Return filed under Excise or VAT shows outstanding/ excess/ unutilised balance of input tax credit**
 - The excess input tax credit reflected in the return filed for period ended 30th June 2017 to be carried forward under GST
 - GST FORM TRAN-1 to be filed by 29th August 2017
 - The GST FORM TRAN-1 to contain details about the credit to be carried forward
 - Excess CENVAT Credit (shown in Excise Return) shall be carried forward as CGST
 - Excess VAT Credit (shown in VAT Return) shall be carried forward as SGST
- **The balance is not allowed to be carried forward in following cases:**
 - The Credit is not admissible in the GST Law
 - All returns for 6 months have not been duly filed under the Excise and VAT Law
 - Credit relates to goods manufactured and cleared under exemption notifications as are notified by the Government
 - VAT Credit attributable to claims related to sales under Form C, F, E1, E2, H etc. not to be allowed unless the forms are duly made
- **Return filed under Excise and VAT does not show excess balance of input tax credit**

Where the entire credit availed has been utilised and no outstanding, excess balance of credit is reflected in the return:

- No credit shall be carried forward under GST
- No requirement to file any detail with respect to the stock in GST FORM TRAN-1

Case 3: Manufacturer registered under VAT only

This will cover SSI dealers opting out of excise. This will also cover manufacturers exempt from excise and not registered under excise.

- **Return filed under VAT shows outstanding/ excess/ unutilised**

balance of input tax credit

- The excess input tax credit reflected in the return filed for period ended 30th June 2017 to be carried forward under GST
- GST FORM TRAN-1 to be filed by 29th August 2017
- The GST FORM TRAN-1 to contain details about the credit to be carried forward
- Excess VAT Credit (shown in VAT Return) shall be carried forward as SGST
- **The balance is not allowed to be carried forward in following cases:**
 - The Credit is not admissible in the GST Law
 - All returns for 6 months have not been duly filed under the VAT Law
 - Credit attributable to claims related to sales under Form C, F, E1, E2, H etc. not to be allowed unless the forms are duly made available
- **Return filed under VAT does not show excess balance of input tax credit**
 - No credit shall be carried forward under GST in respect of VAT
- **Excise duty, Additional Excise Duty, CVD and SAD in respect of raw materials, finished/ semi-finished stock held on 30th June 2017**
 - Credit of Excise and other related duties allowed (subject to few conditions)
 - Duty paying documents/ invoices are essential
 - Date of issue of such invoice must be on or after 1st July 2016
 - GST FORM TRAN-1 to be filed by 29th August 2017
 - The GST FORM TRAN-1 to contain details about the credit claimed
 - The GST FORM TRAN-1 to contain details about the stock held on 30th June 2017
 - Opening Credit as on 1st July 2017 shall be shown as CGST

Case 4: Trader registered under Excise and VAT

This will cover first stage/ second stage dealers

- **Return filed under VAT shows outstanding/ excess/ unutilised balance of input tax credit**
 - The excess input tax credit reflected in the return filed for period ended 30th June 2017 to be carried forward under GST
 - GST FORM TRAN-1 to be filed by 29th August 2017
 - The GST FORM TRAN-1 to contain details about the credit to be carried forward
 - Excess VAT Credit (shown in VAT Return) shall be carried forward as SGST
- **The balance is not allowed to be carried forward in following**

cases:

- The Credit is not admissible in the GST Law
- All returns for 6 months have not been duly filed under the VAT law
- Credit attributable to claims related to sales under Form C, F, E1, E2, H etc. not to be allowed unless the forms are duly made available
- **Return filed under VAT does not show excess balance of input tax credit**
 - No VAT credit shall be carried forward under GST
- **Excise duty, Additional Excise Duty, CVD and SAD in respect of raw materials, finished/ semi-finished stock held on 30th June 2017**
 - Credit of Excise and other related duties allowed (subject to few conditions)
 - Duty paying documents/ invoices are essential
 - Date of issue of such invoice has to be on or after 1st July 2016
 - GST FORM TRAN-1 to be filed by 29th August 2017
 - The GST FORM TRAN-1 to contain details about the credit claimed
 - The GST FORM TRAN-1 to contain details about the stock held on 30th June 2017
 - Opening Credit as on 1st July 2017 shall be shown as CGST

Case 5: Trader registered under VAT

- **Return filed under VAT shows outstanding/ excess/ unutilised balance of input tax credit**
 - The excess input tax credit reflected in the return to be carried forward under GST
 - GST FORM TRAN-1 to be filed by 29th August 2017
 - The GST FORM TRAN-1 to contain details about the credit to be carried forward
 - Excess VAT Credit (shown in VAT Return) shall be carried forward as SGST
- **The balance is not allowed to be carried forward in following cases:**
 - The Credit is not admissible in the GST Law
 - All returns for 6 months have not been duly filed under the VAT law
 - Credit attributable to claims related to sales under Form C, F, E1, E2, H etc. not to be allowed unless the forms are duly made available
- **Return filed under VAT does not show excess balance of input tax credit**
 - No credit shall be carried forward under GST in respect of VAT
- **Excise duty, Additional Excise Duty, CVD and SAD in respect of stock held on 30th June 2017 –**

- Duty paying documents/ invoices are available
- Credit of Excise and other related duties allowed (subject to few conditions)
- Date of issue of such invoice must be on or after 1st July 2016
- GST FORM TRAN-1 to be filed by 29th August 2017
- The GST FORM TRAN-1 to contain details about the credit claimed
- The GST FORM TRAN-1 to contain details about the stock held on 30th June 2017
- Credit shall be carried forward as CGST
- Duty paying documents/ invoices are not available
- Credit of Excise and other related duties allowed (subject to few conditions)
- Credit allowed @ 40% of CGST applicable on supply of the stock after 1st July 2017
- Credit allowed in respect of supplies made till 31st December 2017
- Documents for procurement of the goods are essential
- Goods should not be exempt from excise or nil rated
- GST FORM TRAN-1 to be filed by 29th August 2017
- The GST FORM TRAN-1 to contain details about the stock held on 30th June 2017
- Statement containing details of supplies to be submitted each month for 6 months
- Credit shall be carried forward as CGST

Case 6: Service provider registered under Service Tax paying tax at normal rate

- **Return filed under Service Tax shows outstanding/ excess/ unutilised balance of input tax credit**
 - The excess input tax credit reflected in the return filed for the period ended 30th June 2017 to be carried forward under GST
 - GST FORM TRAN-1 to be filed by 29th August 2017
 - The GST FORM TRAN-1 to contain details about the credit to be carried forward



- Excess CENVAT Credit (shown in Service Tax Return) shall be carried forward as CGST
- **The balance is not allowed to be carried forward in following cases:**
 - The Credit is not admissible in the GST Law
 - All returns for 6 months have not been duly filed under the Service Tax Law
- **Return filed under Service Tax does not show excess balance of input tax credit**
 - No credit shall be carried forward under GST in respect of Service Tax

Case 7: Manufacturer/ Service provider not registered under any of current laws now registered under GST

- **Excise duty, Additional Excise Duty, CVD and SAD in respect of raw materials, finished/ semi-finished stock held on 30th June 2017**
 - Credit of Excise and other related duties allowed
 - Inputs/ goods should be used to make taxable GST supplies
 - ITC in respect of the inputs should be eligible under GST
 - Duty paying documents/ invoices are essential
 - Date of issue of such invoice has to be on or after 1st July 2016
 - GST FORM TRAN-1 to be filed by 29th August 2017
 - The GST FORM TRAN-1 to contain details about the credit claimed
 - The GST FORM TRAN-1 to contain details about the stock held on 30th June 2017
 - Credit shall be carried forward as CGST

Case 8: Trader not registered under any of current laws now registered under GST

- **VAT in respect of raw materials, finished/ semi-finished stock held on 30th June 2017**
 - Credit of VAT allowed
 - Inputs/ goods should be used to make taxable GST supplies
 - ITC in respect of the inputs should be eligible under GST
 - Duty paying documents/ invoices are essential
 - Date of issue of such invoice must be on or after 1st July 2016
 - GST FORM TRAN-1 to be filed by 29th August 2017
 - The GST FORM TRAN-1 to contain details about the credit claimed
 - The GST FORM TRAN-1 to contain details about the stock held on 30th June 2017
 - Credit shall be carried forward as SGST

– Contributed by Kolkata Study Group

CERTIFICATE COURSE ON GST

S. No.	Hosting Branch/ Region	START DATE	END DATE
1	Hyderabad Branch of SIRC of ICAI	2-Jun-2017	1-Jul-2017
2	PIMPRI CHICHWAD Branch of WIRC of ICAI	3-Jun-2017	2-Jul-2017
3	Noida Branch of CIRC of ICAI	3-Jun-2017	25-Jun-2017
4	Visakhapatnam Branch of SIRC of ICAI	5-Jun-2017	16-Jun-2017
5	LUCKNOW Branch of CIRC of ICAI	9-Jun-2017	25-Jun-2017
6	Pune Branch of WIRC of ICAI	12-Jun-2017	21-Jun-2017
7	Ernakulam Branch of SIRC of ICAI	17-Jun-2017	22-Jul-2017
8	Allahabad Branch of CIRC of ICAI	30-Jun-2017	23-Jul-2017

PUBLICATION

The Indirect Taxes Committee of ICAI keeps the members updated with the changes through its publications. The following publication have been published by the Committee:

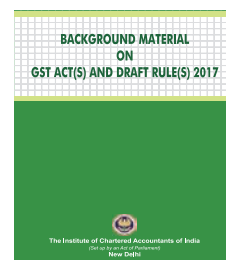


FAQs and MCQs on GST

“FAQs and MCQs on GST” which provides a comprehensive coverage of the GST Acts in question answer format as an easy & lucid way to understand the law.

Background Material on GST Act(s) and Draft Rule(s) 2017

“Background Material on GST Act(s) and Draft Rule(s) 2017” which is a comprehensive material containing a clause by clause analysis of the four Acts viz CGST Act, IGST Act, UTGST Act and GST (Compensation to the States) Act along with FAQ’s, MCQ’s, Flowcharts and Illustrations etc. to make the analysis and understanding of the law easier.



Bare Law on GST Act(s) and Draft Rule(s)

Bare Law on GST Act(s) and Draft Rule(s) which is a compilation of four key legislations viz. The Central GST Act, 2017, The Integrated GST Act, 2017, The GST (Compensation to States) Act, 2017, and The Union Territory GST Act, 2017 and 11 draft Rules i.e. Composition, Input Tax Credit, Determination of Value of Supply, Transitional Provisions, Registration, Tax Invoice, Credit and Debit Notes, Payment of Tax, Refund, Return, Assessment and Audit Rules and Electronic Way Bill Rules.

Ordering Information

The Publication can be purchased directly from the sales counter at the ICAI’s Regional Offices / Branches or at the Head Office. Member may also download from Indirect Taxes Committee Website: <http://idtc.icai.org/publications.php>. To order by post, requisition may be sent to the Postal Sales Department of the ICAI at postalsales@icai.in or can be order online at <https://icaionlinestore.org/indirect-taxes-committee>



TEST YOUR KNOWLEDGE

- Q1. What is the rate applicable under CGST to a registered person being a manufacturer opting to pay taxes under composition scheme?
- 2.5%
 - 1%
 - 0%
 - No composition for manufacturer
- Q2. If the goods are supplied to related person then how should the taxable person ascertain the value of supplies?
- Seek the help of the GST officer
 - Use the arm's length price as required under the Income Tax law
 - Identify the prices at which goods are sold by the unrelated person to his customer
 - Refer the Rules which will be prescribed for this purpose
- Q3. The tax paying documents in section 16(2) is
- Bill of entry, Invoice raised on RCM supplies, etc.
 - Acknowledged copy of tax paid to department
 - Supply invoice by the recipient
 - Any of the above
- Q4. A person is entitled to take credit of input tax as self-assessed in the return and credited to Electronic credit ledger on
- Final basis
 - Provisional basis
 - Partly Provisional and partly final basis
 - None of the above
- Q5. Which one of following statements are correct?
- Voluntary registration is not possible under GST.
 - Voluntarily registered person not liable to comply with all the provisions of the GST.
 - A person may get himself registered voluntarily and shall comply with all the provisions of GST.
 - None of the above.
- Q6. What is the validity of the registration certificate?
- One year
 - No validity
 - Valid till it is cancelled.
 - Five years.
- Q7. Details of Outward supplies shall include
- Invoice
 - Credit and Debit notes
 - Revised invoice issued in relation to outward supplies
 - All the above
- Q8. Which of the following is correct?
- Non-Resident taxable person shall file the return by 20th of succeeding month in Form GSTR 5
 - Input Service Distributor shall furnish the return by 13th of the succeeding month in Form GSTR 6
 - The person deducting tax at source shall furnish the return by 10th of the succeeding month in Form GSTR 7
 - All the above
- Q9. A registered person claiming refund of balance in electronic cash ledger may make such a claim in:-
- Application for refund
 - Annual Return
 - Return filed at the end of tax periods
 - None of the above
- Q10. Who is authorised to conduct the audit including books of account u/s 66?
- Chartered Accountant as may be nominated by the [Commissioner].
 - Cost Accountant as may be nominated by the [Commissioner].
 - (a) or (b)
 - Any officer as may be nominated by the [Additional Director].

Answers

1. (b) 1% , 2. (d) Refer the Rules which will be prescribed for this purpose, 3. (a) Bill of entry, Invoice raised on RCM supplies, etc., 4. (b) Provisional basis, 5. (c) A person may get himself registered voluntarily and shall comply with all the provisions of GST, 6. (c) Valid till it is cancelled, 7. (d) All the above, 8. (d) All the above, 9. (c) Return filed at the end of tax periods, 10. (c) (a) or (b)

FORTH COMING EVENTS UNDER THE AEGIS OF INDIRECT TAXES COMMITTEE

2nd & 3rd June, 2017

Place : Gandhidham • CPE Hours : 12 Hours

Title of the Seminar : Workshop on GST

Contact Details : Gandhidham Branch of WIRC of ICAI
Phone: 02836-230305
Email: gandhidham@icai.org

Title of the Seminar : Workshop on GST

Contact Details : Mangalore Branch of SIRC of ICAI
Phone: 0824 2439722, 2495722
Email: mangalore@icai.org

2nd & 3rd June, 2017

Place : Mangalore • CPE Hours : 12 Hours

2nd & 3rd June, 2017

Place : Jammu • CPE Hours : 12 Hours

Title of the Seminar : Workshop on GST

Contact Details : J & K Branch of NIRC of ICAI
Phone: 0191-2581027
Email: jammu_kashmir@icai.org

Title of the Seminar : Workshop on GST

Contact Details : Agra Branch of CIRC of ICAI
Phone: 0562 4040598
Email: icaiagra@gmail.com

3th, 4th, 17th and 18th June, 2017

Place : Agra • CPE Hours : 24 Hours

9th & 10th June, 2017

Place : Hubli • CPE Hours : 12 Hours

Title of the Seminar : Two Days Workshop on GST

Contact Details : Hubli Branch of SIRC of ICAI
Phone: 0836-2288337, 2283081
Email: icaihubli@gmail.com

Title of the Seminar : Two Days Workshop on GST

Contact Details : Raniganj Branch of EIRC of ICAI
Phone: (0341)-244 3237
Email: raniganj@icai.org

10th and 11th June

Place : Raniganj • CPE Hours : 12 Hours

13th and 14th June, 2017

Place : Chennai • CPE Hours : 12 Hours

Title of the Seminar : National Conference on GST

Contact Details : Chennai Branch of SIRC of ICAI
Phone: 044-30210320/381
Email: sirc@icai.in

Title of the Seminar : Programme on GST

Contact Details : Goa Branch of WIRC of ICAI
Phone: 0832-2438516
Email: goa@icai.org

16th and 17th June, 2017

Place : Goa • CPE Hours : 12 Hours

16th, 17th and 18th June, 2017

Place : Hyderabad • CPE Hours : 18 Hours

Title of the Seminar : Conference on GST

Contact Details : Hyderabad Branch of SIRC of ICAI
Phone: 040-2970 7026/7024/0924
Email: hyderabad @icai.org

Title of the Seminar : GST Conclave-III

Contact Details : EIRC of ICAI
Phone: 30211104/08/33
Email: eirc@icai.in, eircevents@icai.in

17th June, 2017

Place : Kolkata • CPE Hours : 6 Hours

17th and 18th June, 2017

Place : Bhuj • CPE Hours : 12 Hours

Title of the Seminar : Two Days Workshop on GST

Contact Details : Bhuj Branch of WIRC of ICAI
Phone: 91 2832 258580
Email: bhujbranch.wirc@gmail.com



FAQs ON TAX INVOICE, CREDIT AND DEBIT NOTE

Q1. When should a Tax Invoice be issued for supply of Goods?

Ans. The answer depends upon the type of goods. As per Sec.31(1), if the nature of the supply is such that:

- Movement of goods is involved, then the tax invoice has to be issued before or at the time of removal of the goods for supply to the recipient.
- Movement of goods is not involved, then the tax invoice has to be issued before or at the time of the goods are delivered to the recipient or when the goods are made available to the recipient.

Q2. Do I have to issue an invoice even if I remove goods for 'sale on approval basis'?

Ans. In such cases, as per sec. 31(7) tax invoice need not be raised at the time of removal. This is because the removal cannot be said to be made for the purpose of supply to the recipient, as it is not certain (at the time of dispatch of goods) that the sending of goods will result in a 'supply'. However, on or before the confirmation of the supply by the other party, the tax invoice has to be issued.

The law provides a time limit of 6 months from the date of removal, during which the goods will not be treated as supplied. Where no confirmation is received within such period, a tax invoice should be issued on the day immediately succeeding the 6-month period.

Q3. I am constructing a building for my client. The client is required to pay me on completion of plinth, 1st floor and 2nd floor. When should the invoice be raised?

Ans. The above instance is a case of continuous supply of services. Here, since the payment is linked to completion of an event (i.e., milestones set in the contract), an invoice should be raised on or before the due date of completion of event. Therefore, an invoice be raised on or before completion of the 1st floor and the second time on or before the completion of 2nd floor.

Q4. I have a registration as an Input Service Distributor. Am I required to raise invoices even though no taxablesupplies are made from this registration number?

Ans. Yes. An Input Service Distributor (ISD) should issue a tax invoice being an 'ISD invoice' for distributing credits to the GST registrations that have the same PAN as that of the ISD. Such invoice will be different from invoices reflecting supply

of goods or services (refer Invoice Rules). This is a document required under Section 20 of the Act.

Q5. What are the circumstances in which a Credit Note is to be issued?

Ans. As per Sec. 34(1), for issuing a Credit note, an invoice for a supply should have been issued earlier. A credit note may be issued in the following cases:

- The taxable value on which the tax is collected is more than the actual taxable value;
- The tax charged is more than what should have been charged;
- The recipient has returned the goods;
- The recipient has found that the goods or services supplied are deficient.

Q6. What should the contents of a tax invoice be?

Ans. Normally, the tax invoice should have the following details:

- Name, address, GSTIN of the supplier
- Consecutive Serial Number unique for a financial year having alphabets, numerals and special characters being "-or" / " " only
- Date of Issue
- Name and address of the recipient
- GSTIN/UID of the recipient, if registered
- HSN code of Goods or Accounting Code of Services
- Description of Goods / Services
- Quantity and Unit(or Unique Quantity Code) in case of Goods
- Total Value of Goods and Services
- Post discount/abatement taxable value of Goods and Services
- Rate of Tax, Separately for each type of tax (Central tax, State tax, Integrated tax, Union territory tax)
- Amount of Tax Charged
- Place of Supply along with the name of the State if the supply is an inter-State supply
- Place of delivery if different from place of supply
- Whether tax is payable on reverse charge
- Signature/Digital Signature of the Supplier or his authorised representative.

FAQs ON TRANSITIONAL PROVISIONS

Q1. GST Registration for existing registered dealer has to be taken by submission of documents or will it be done automatically?

Ans. After enrolment on common portal, said person shall be granted registration on provisional basis, and then said person shall submit an application electronically in FORM GST REG – 24, duly signed, along with the documents and information specified there in the said application on the common portal with in a period of 3 months.

Q2. Can a person voluntary opt out of GST who is registered under the earlier law?

Ans. Yes, a person can opt out of GST voluntarily in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.

Q3. How will a manufacturer/ service provider carry forward the Cenvat credit in his electronic credit ledger?

Ans. The amount of Cenvat credit carried forward, in the last return furnished under the existing law shall be allowed to be carried forward as credit in the electronic credit ledger under the GST by a registered person other than a person opting to pay tax u/s 10, provided that the registered person shall not be allowed to take the credit in the following circumstances, namely: -

- Where the said credit is not admissible as credit under this act.
- Where all the returns required under the existing law has not furnished for the period of six months immediately preceding the appointed day.
- Where the said amount of credit relates to the exempted goods manufactured and cleared

Q4. Will A person registered in a State say Maharashtra be eligible to claim credit if he does not take registration in that State under GST for any reason say closure of operations etc.?

Ans. No. The credit claimed in the return of a particular State will ordinarily be eligible to be carried forward only in the succeeding SGST law of that State, in the instance case Maharashtra, and cannot be availed as credit in any other State GST Law.

Q5. How will the condition of reduced price to recipient be satisfied?

Ans. The component of eligible duties and taxes should be reduced from the ordinary sale price to pass on the benefit of reduced prices. This is illustrated by way of a comparative example -

Particulars	Earlier Law	GST Law
Basic Cost	100.00	100.00
Excise @ 12.5%	12.50	Rs 7.20

(since 40% of the CGST is creditable. Assuming it is 18%)		
Total Cost	112.50	105.30
Selling Price (excl. applicable taxes)	162.50	155.30
Gross Profit	50.00	50.00

In the above illustration if the registered taxable person sells at Rs 155.30, only then he will get the benefit of credit at the time of supply of this product.

Q6. Can credit be claimed in respect of CENVAT, Entry tax and VAT paid on goods under present law and which is in transit as on the transition date?

Ans. Yes, credit can be claimed subject to the following prerequisites -

The registered taxable person should record the invoice or any other duty or tax paying document of the same in his books of accounts within 30 days or such extended time not more than 30 days and

A statement should be furnished in prescribed form furnishing the following details:-

- the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law,
- the description, quantity and value of the goods or services
- the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services,
- the date on which the receipt of goods or services is entered in the books of account of the recipient.

Q7. Will persons claiming abatement under service tax notifications and paying service tax at an effective rate lower than 15% be termed as 'composition tax payers' for purpose of section 140(3) of the CGST law?

Ans. The services covered under abatement notifications (such as 26/2012-ST) will not be covered under the said provisions. The abatement notifications are for the purpose of determination of the taxable value on which service tax is assessable and cannot be considered as composition rates. Such services may qualify as 'exempted services' under the Cenvat Credit rules and cannot be termed as services subject to composite tax rates.

Q8. If a dealer paying tax under composition scheme under earlier law continues to pay tax under composition scheme under the GST law will the dealer get any credit under the GST law? Would the answer change if the dealer subsequently opts out of composition scheme?

Ans. No the dealer will not get any credit when he changes over to composition scheme under GST. The position would be same even if he switches out of composition scheme subsequently under GST, except in respect of goods held in stock as on the date of switch over, which is entitled to credit, subject to the conditions specified in section 140(5).

Q9. What are the implications of GST on the principal manufacturer in respect of goods sent on job work before the appointed date and received within 6 months from the appointed date?

Ans. In case the goods are returned within 6 months from the appointed date, no tax shall be payable by the original supplier, provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

In case the goods are returned after 6 months or extended period (if any) from the appointed date, the input tax credit claimed by the original supplier shall be unless recovered under the existing law, be recovered as an arrear of tax. In either case, both the principal manufacturer and job worker shall declare the details of goods held in stock by the job worker as on the appointed date in the prescribed form.

Q10. What are the implications in respect of upward price revision for goods removed or services provided prior to the appointed date?

Ans. The supplier shall issue a supplementary invoice/ debit note within 30 days of the price revision and charge GST on such supplementary invoice/ debit note. The rate as per the GST schedule may apply, however this is a contentious matter.

Q11. What happens to the refund claims filed after the appointed date in respect of goods cleared or services provided under the earlier law?

Ans. Any application of refund filed after the appointed date for a claim pertaining to the earlier law shall be disposed off as per the terms and conditions of the earlier law. The claim would be eligible irrespective of export of goods or services before or after the appointed date, for instance input credit pertaining to April, May and June can be claimed in June even if the export is in June (assuming GST is implemented in June 2017).

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Q12. Whether supply of goods and services post appointed date is liable to tax under CGST even otherwise the tax thereon is paid under the State VAT laws and service tax laws respectively?

Ans. Yes, as per section 142(11)(c) the tax under the CGST is liable to be paid in case of supply of goods and services both

post appointed date even otherwise the tax thereon is paid under the State VAT laws or chapter V of Finance Act, 1994. However, the taxable person is entitled to claim credit of VAT paid and service tax paid under the existing laws (State VAT laws and service tax law) and pay the differential taxes under the CGST Act, 2017 to the extent of supplies effected after the appointed date.

Q13. Whether goods sent on approval basis before the appointed date and returned after the appointed date are liable to tax under the GST regime?

Ans. The implications of taxes under the GST regime in case of goods sent on approval basis and returned after the appointed date shall be as follows:

No tax shall be payable if goods are sent for approval within 6 months prior to the appointed date and received within 6 months from the appointed date;

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this sub-section

And also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

Q14. Whether the recipient is liable to deduct the tax on the payment effected for supply of goods for which tax is already deducted under the existing laws and the invoice is also issued before the appointed date?

Ans. No. In terms of Section 142(13), recipient is not required to deduct the applicable taxes from the payments effected to the supplier post appointed date in case the tax is already deducted under the existing laws and also the invoice is issued prior to the appointed date.

Q15. What is the implication of GST in respect of duty paid goods removed before the appointed date and returned after the appointed date?

Ans. If any duty paid goods are sold/removed not being earlier than six months of appointed date under the earlier law are returned within six months of the appointed date, the seller is eligible for refund of duty paid if the sales is made to unregistered buyer, if the sale is to a registered buyer then he will have to charge GST as a supply. In case goods are returned after six months from the appointed date, tax is payable by the person receiving the goods as purchase from unregistered supplier and a registered person will have to charge GST as supply as normal

Q16. What will be the status of adjudication/ assessment, appeal, review, revision or reference proceedings which are initiated before or after the appointed date in respect of periods covered under the earlier law?

Ans. The adjudication or assessment proceedings shall be conducted and disposed off under the provisions of the earlier law. If any amount becomes recoverable as a result of the proceedings including appeal/ revision/ review or reference, such amount unless recovered under the existing law, shall be recovered as arrears of duty or tax under the GST law. If any amount becomes refundable.

ICAI'S CONTRIBUTION FOR SMOOTH IMPLEMENTATION OF GST AS PARTNER IN NATION BUILDING

1. Recent Publications on GST:

The Institute has recently released a publication namely, "FAQs and MCQs on GST" which provides a comprehensive coverage of the GST Acts in question answer format as an easy & lucid way to understand the law. In addition to this, following publication on GST were earlier published:

- (a) Background Material on GST Act(s) and Draft Rule(s), 2017
- (b) Bare Law on GST Act(s) and Draft Rule(s)
- (c) Simplified GST Guide for Manufacturer
- (d) Study Paper on Taxation of E-Commerce under GST
- (e) Study Paper on Unjust Enrichment

These publications can be downloaded at <http://idtc.icai.org/publications.php> and can be ordered online at <https://icaionlinestore.org/indirect-taxes-committee>

2. Suggestions on GST Act

ICAI has submitted its suggestions (Part-I) on the GST Acts to the Government on 30th May, 2017, which can be downloaded from the website <http://idtc.icai.org/>. Comprehensive suggestions would be submitted by the end of June, 2017.

3. Short video on GST

Committee has recorded a short video on lectures on process of migration into GST and its benefits, which can be viewed at <https://youtu.be/Cc9UgElKdFg>. Further, recording of short video on majority of the topics of GST based on GST Act is going on and would be hosted shortly.

4. 10 Days Certificate Course on GST

The Committee launched a Certificate Course on Goods and Services Tax (GST) at more than 36 locations all over India. Now, the Committee is planning to organise the virtual classes of this Certificate Course so that the maximum number of members in industry as well as in practice would be able to get the specialized and updated knowledge of GST in a systematic manner which could enable them to take up various professional opportunities offered in this area.

5. Training Programme on GST for Service tax Commissionerate

The Committee organised three training programmes on Goods and Services Tax for the officials of Delhi and one for Meerut Commissionerate.

6. Interactive Programme on GST for trade associations

The committee is proactively involved in co-ordinating with the trade associations for organising open house Interactive Programme on GST. In addition to earlier organised 14 programme, 3 more programmes have been organised by the committee as part of its initiatives for partner in nation building. Further, more than 5 interactive programmes on GST have been scheduled.

7. Outreach Programme on GST in Association with Service Tax Commissionerate

The Committee has organised 4 outreach programmes on GST as knowledge partner in association with Kolkata, Delhi Commissionerate (twice) and Ahmedabad.

8. A Study Report to enable smooth Transition from Pre-GST to Post-GST Regime:

With a view to facilitate the Government in smooth transition from Pre-GST to Post-GST Regime, the report prepared and submitted by ICAI and it can be downloaded from <http://idtc.icai.org/budget-memorandum.html>

9. A Study Report on Impact of GST on Jammu & Kashmir Taxation System:

With a view to facilitate the Government of Jammu & Kashmir in understanding the impact of GST on Jammu & Kashmir Taxation System, the ICAI submitted a Study Report to the Government of Jammu & Kashmir. The reports submitted by ICAI can be downloaded from <http://idtc.icai.org/publications.php>

10. Impact of GST Regime on Finances & Economy in Delhi

With a view to facilitate the Government of Delhi in understanding the impact of GST on Delhi Taxation System, the Indirect Taxes Committee has submitted a Study Report to the Delhi Government. The report entails the impact of GST implementation on Delhi economy, provides a comparative report on revenue under the present and GST regime etc.

11. Nomination at the Advisory Committee constituted by Goods and Services Tax Network (GSTN):

Considering the expertise of members of ICAI, Goods and Services Tax Network requested ICAI to nominate its member at the Advisory Committee constituted by Goods and Services Tax Network. Accordingly, ICAI has nominated members at the said advisory Committee.

12. Support extended to Goods and Services Tax Network (GSTN):

Based on the request from GSTN, following supports have been provided:

- (i) Sharing of data of ICAI's members for online validation by GSTN.
- (ii) Nominating members for providing feedback on the software module of GST developed by GSTN.
- (iii) List of IT Firm provided to GSTN for providing training so that IT Firm may make necessary changes compatible with GST.

13. Formation of Study Group for helping State Government in smooth implementation of GST:

The Institute has already formed twenty (20) State level Study Group for extending its support to the State Government in smooth implementation of GST.

14. Identification and Training of new speakers on GST:

550 new speakers have been identified and trained in Model GST Law making the expert pool of over 700 faculties across India.

15. Workshops, Seminars and Conferences:

More than 1500 workshops, seminars and conferences on GST have been organised across the country since January, 2017.



You Tube Channel of Indirect Taxes Committee



In order to support anytime anywhere learning, the Indirect Taxes Committee has launched its YouTube Channel viz. <https://www.youtube.com/indirecttaxcommittee> which contains recordings of various webcasts organised by the committee, video lectures etc. Recently the committee had in association with Service Tax Commissionerate, Delhi Zone organised a series of 4 live webcasts during April-May 2017 on the theme **“Chale GST ki Aur”** which were addressed by eminent experts from the Department as well as ICAI. The details of the webcasts are as under:

S. No.	Date	Topic	YouTube Links of the Webcast
1	12th April, 2017	Migration + Transitional Provision	https://www.youtube.com/watch?v=XIGOd8NrNNG
2	18th April, 2017	Major Changes [existing CX & ST regime Vs proposed GST regime]	https://www.youtube.com/watch?v=vJc7EDXp1cU
3	24th April, 2017	Input Tax Credit + ITC Rules	https://www.youtube.com/watch?v=XwflxxelWo
4	2nd May, 2017	IGST+ Procedures (Payment, Return, Refund)	https://www.youtube.com/watch?v=ul7diIWGzVY

These recordings may also be downloaded for offline viewing. All the future e-initiatives of the committee would be available in the said channel. Subscribe to stay connected!!



INDIRECT TAXES COMMITTEE (IDTC) OF ICAI A ONE STOP DESTINATION FOR INDIRECT TAXES i.e. IDTC website: www.idtc.icai.org

The Indirect Taxes Committee of ICAI has launched its website viz. www.idtc.icai.org to provide the users a well set platform for sharing and gaining knowledge on indirect taxes and easy accessibility to the Indirect taxes Committee. The Committee works relentlessly towards keeping the members abreast with the latest changes in the Indirect tax laws vide various mediums like, organising programmes, updating study materials, sending regular updates etc.

Main features:

- * Regular Indirect Taxes Updates
- * Knowledge Bank of Indirect Taxes – Articles, Legal Updates etc.
- * Publication on Excise, Service Tax, VAT, GST etc.- (Available for free download and online ordering)
- * Recordings of Live Webcasts
- * Dedicated GST Tab on IDT Website
- * Upcoming events
- * Details of Certificate Courses, Programme, Seminars etc.
- * Links of related important website
- * Connect with Indirect Taxes as a faculty/author of the publication etc.

Your suggestions on the website are also welcome at idtc@icai.in

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Workshop on GST at Udaipur



Seminar on GST held at New Delhi



Workshop on GST at Bangalore



National Conference on GST at Bilaspur



National Conference on GST at Vasai



National Seminar on GST at Ernakulam



Seminar on GST at Ahmedabad