

## **GST**

### **Mentioning details of inter-State supplies made to unregistered persons in GST returns**

A registered supplier is required to mention the details of inter -State supplies made to unregistered persons, composition taxable persons and UIN holders in Table 3.2 of FORM GSTR-3B. Further, the details of all inter-State supplies made to unregistered persons where the invoice value is up to Rs 2.5 lakhs (rate-wise) are required to be reported in Table 7B of FORM GSTR-1 but the number of registered persons has not reported the details of inter-State supplies made to unregistered persons in Table 3.2 of FORM GSTR-3B. However, the said details have been mentioned in Table 7B of FORM GSTR-1. Non-mentioning of the said information results in:

- (i) non-apportionment of the due amount of IGST to the State where such supply takes place; and
- (ii) a mis-match in the quantum of goods or services or both actually supplied in a State and the amount of integrated tax apportioned between the Centre and that State, and consequent non-compliance of sub-section (2) of section 17 of the Integrated Goods and Services Tax Act, 2017.

The Central Government vide [Circular no 89/08/2019-GST dated the 18<sup>th</sup> Feb, 2019](#) has clarified that apportionment of IGST collected on inter-State supplies place is based on the information reported in Table 3.2 of FORM GSTR-3B. Accordingly, persons making inter-State supplies to unregistered persons shall report the details of such supplies both in Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR-1 and contravention of any of the provisions of the Act or the rules made there under attracts penal action under the provisions of section 125 of the CGST Act.

*Comment: It appears that the consequence of penalty ought not to be the reason for correctly filing the returns. Care must be taken to file returns with correct and complete information.*

*[Circular no 89/08/2019-GST dated the 18<sup>th</sup> Feb, 2019]*

### **Compliance of rule 46(n) of the CGST Rules, 2017 while issuing invoices in case of inter- State supply**

It has been brought to the notice that a number of registered persons (especially the banking, insurance and telecom sectors, etc.) are not mentioning the place of supply along with the name of the State in case of a supply made in the course of interstate trade or commerce.

Therefore, in order to ensure uniformity in the implementation of the provisions of law , the Central Government vide [Circular No. 90/09/2019-GST dated 18th Feb, 2019](#) has clarified that all registered persons making supply of goods or services or both in the course of inter-State

trade or commerce shall specify the place of supply along with the name of the State in the tax invoice.

The provisions of sections 10 and 12 of the Integrated Goods and Services Tax Act, 2017 may be referred to in order to determine the place of supply in case of supply of goods and services respectively. Contravention of any of the provisions of the Act or the rules made there under attracts penal action under the provisions of sections 122 or 125 of the CGST Act.

*Comment: This is a very important information that industry needs to take care as it affects flow of revenue to the appropriate State based on the Place of Supply information.*

*[Circular No. 90/09/2019-GST dated 18th Feb, 2019]*

### **Clarification regarding tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse**

Supply of warehoused goods while deposited in custom bonded warehouses had the character of inter-State supply as per the provisions of IGST Act, 2017. But, due to non-availability of the facility on the common portal, suppliers have reported such supplies as intra-State supplies and discharged central tax and state tax on such supplies instead of integrated tax.

Therefore, the Central Government vide [Circular no. 91/10/2019-GST dated 18<sup>th</sup> Feb, 2019](#) in view of revenue neutral position of such tax payment and that facility to correctly report the nature of transaction in FORM GSTR-1 furnished on the common portal was not available during the period July, 2017 to March, 2018, has clarified that the suppliers who have paid central tax and state tax on such supplies, during the said period, would be deemed to have complied with the provisions of law as far as payment of tax on such supplies is concerned as long as the amount of tax paid as central tax and state tax is equal to the due amount of integrated tax on such supplies.

*As per circular 3/1/2018-IGST dated 25 May 2018, w.e.f 1st April 2018 the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax*

*Comment: This is a welcome relief to trade and industry. Similar instances have occurred in the case of outbound intermediary services where IGST has been paid. While there is compelling similarity, this circular expressly applies to warehoused goods only.*

*Another instance where incorrect taxes have been paid are cases where debonding of warehoused goods on which BCD+IGST has been paid whereas circular 50/2018-Customs dated 6 Dec 2018, which states that 'duties foregone on import' only need to be paid but on depreciated values.*

*Reference to premise – 'revenue neutral' position of payment of taxes – stated in this circular, is interesting and may be kept for future reference while addressing bona fide errors in payment of taxes.*

*[Circular no. 91/10/2019-GST dated 18<sup>th</sup> Feb, 2019]*

### **Exemption from obtaining registration w.e.f April 1, 2019**

The Central Government vide [Notification No. 10/2019-Central Tax dated 07<sup>th</sup> March, 2019](#) exempted under section 23 of CGST Act, category of persons who are **engaged in exclusive supply of goods** and whose aggregate turnover in the financial year does not exceed **Rs. 40 lakh**, except in case of, -

- i. Persons compulsorily required to be registered under section 24 of the said Act;
- ii. Persons engaged in making supplies of the following goods:

Sl. No.	Tariff item, sub-heading, heading or Chapter	Description
1.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa.
2.	2106 90 20	Pan masala
3.	24	All goods, i.e. Tobacco and manufactured tobacco substitutes

- iii. Persons engaged in making intra-State supplies in following 10 States/ Union Territories:-

- ❖ **Northeastern States:** Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand
- ❖ **Southern States:** Telangana
- ❖ **Union Territory:** Puducherry

- iv. Persons opting for voluntary registration under section 25(3) or such registered persons who intend to continue with their registration under the said Act

However, w.e.f 1<sup>st</sup> Feb, 2019 Govt. has made the amendment to Section 22 of the CGST Act to increase the threshold exemption limit for registration from Rs. 10 lakhs to Rs. 20 lakhs for certain specified states.

Present position is as follows:

S.N	Threshold	State
1.	Upto Rs. 10 lacs	Manipur; Mizoram; Nagaland; Tripura.
2.	Upto Rs. 20 lacs	<b><u>Specified States</u></b> Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.  <b><u>Other than Specified States / UT</u></b> Telangana, Puducherry
3.	Upto Rs. 40 lacs	All States other than 1 & 2

*Comment: Previously, 5/2017 was issued under section 23(2) which exempted those who are entirely supplying exempted goods or services but are liable to registration only due to their liability to tax under 9(3). It is to be noted that where aggregate turnover includes income by way of interest or discount on loans and advances the benefit of this exemption notification CANNOT be taken. 'Exclusively engaged in supply of goods' is a condition of the notification*

and section 22 can be invoked if this condition is violated on any day in the year and tax from Rs.20 lacs upto the date when this condition stands breached may become due without any availability of input tax credit.

[\[Notification No. 10/2019-Central Tax dated 07<sup>th</sup> March, 2019\]](#)

**Due dates for furnishing FORM GSTR-1 for the months of April, May and June, 2019**

The Central Government vide *N No. 11/2019 – CT ; N No. 12/2019 – CT ; N No. 13/2019 – CT dated 07<sup>th</sup> March, 2019* has notified the due dates for furnishing the details of outward supply of goods or services or both in **FORM GSTR-1** and summary of inward and outward supply in **FORM GSTR-3B** for the period **April to June, 2019** as follows:

<b>Form</b>	<b>Due Date</b>
GSTR 1 (aggregate turnover of up to 1.5 crore rupees)	31 <sup>st</sup> July, 2019
GSTR 1 (aggregate turnover of more than 1.5 crore rupees)	11 <sup>th</sup> day of the month succeeding such month
GSTR 3B	20 <sup>th</sup> day of the month succeeding such month

[\[Notification No. 11/2019 – Central Tax and Notification No. 12/2019 – Central Tax dated 07<sup>th</sup> March, 2019\]](#)

**Extension in the limit of threshold of aggregate turnover for availing Composition Scheme to Rs. 1.5 crores**

W.e.f 1<sup>st</sup> April, 2019, the Central Government vide *Notification No. 14/2019 – Central Tax dated 07<sup>th</sup> March, 2019* notified that an eligible registered person, whose aggregate turnover in the preceding financial year **did not exceed Rs. 1.5 Crores**, may opt to pay tax under Composition scheme. However, the said aggregate turnover shall be **Rs. 75 lakh** in case of persons registered under following States:-

- ❖ Arunachal Pradesh
- ❖ Manipur
- ❖ Meghalaya
- ❖ Mizoram
- ❖ Nagaland
- ❖ Sikkim
- ❖ Tripura
- ❖ Uttarakhand

Further, the option of composition scheme under Section 10 of the CGST Act shall be restricted in case of such person who is a manufacturer of the goods, the description of which is specified below:

Sl. No.	Tariff item, sub-heading, heading or Chapter	Description
1.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa.
2.	2106 90 20	Pan masala
3.	24	All goods, i.e. Tobacco and manufactured tobacco substitutes

*Comment: Amendment to section 10 increasing the threshold is now implemented.*

*[Notification No. 14/2019 – Central Tax dated 07<sup>th</sup> March, 2019]*

**New scheme for supplier of services with a tax rate of 6%**

W.e.f April 1, 2019 the Central Government vide [Notification No. 2/2019-Central Tax \(Rate\) dated 07<sup>th</sup> March, 2019](#) notified Composition scheme in case of **intra-State supply** of goods or services or both, at the rate along with the conditions specified below:

Description of supply	Rate (per cent)	Conditions
First supplies of goods or services or both up to an aggregate turnover of Rs. 50 lakhs made on or after the 1st day of April in any financial year, by a registered person.	3	<p>1. Supplies are made by a registered person, -</p> <ul style="list-style-type: none"> <li>(i) whose aggregate turnover in the preceding financial year was Rs. 50 lakh or below;</li> <li>(ii) who is <b>not eligible</b> to pay tax under sub-section (1) of section 10;</li> <li>(iii) who is <b>not engaged</b> in making any supply which is <b>not leviable to tax</b>;</li> <li>(iv) who is <b>not engaged</b> in making any <b>inter-State</b> outward supply;</li> <li>(v) who is neither a casual taxable person nor a non-resident taxable person;</li> <li>(vi) who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and</li> <li>(vii) who is not engaged in making supplies of: <ul style="list-style-type: none"> <li>a. Ice cream and other edible ice, whether or not containing cocoa.</li> <li>b. Pan masala</li> <li>c. Tobacco and manufactured tobacco substitutes</li> </ul> </li> </ul> <p>2. Where more than one registered persons are having same PAN, central tax on supplies by all such registered persons is paid at the given rate.</p>

	<p>3. The registered person <b>shall not collect any tax</b> from the recipient nor shall he be entitled to any credit of input tax.</p> <p>4. The registered person shall issue, instead of tax invoice, a bill of supply.</p> <p>5. The registered person shall mention the following words at the top of the bill of supply, namely: - ‘Taxable person paying tax in terms of Notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies’.</p> <p>6. Liability to pay central tax at the rate of 3% on all outward supplies <b>notwithstanding any other notification issued</b> under section 9 or section 11 of said Act.</p> <p>7. Liability <b>to pay central tax on inward supplies</b> on reverse charge under sub-section (3) or sub-section (4) of section 9 of said Act.</p> <p>Explanation: For the purposes of this notification, the expression “first supplies of goods or services or both” shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.</p>
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It may be noted that while computing aggregate turnover in order to determine eligibility of a registered person to pay central tax at the rate of 3%, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

*Comment: Another welcome relief to Service Providers that is modelled on the SSI-scheme under Central Excise laws. Exemption runs from April 2019 till Turnover reaches Rs.50 lacs. This is an optional facility through a rate notification that is ‘notwithstanding’ any other rate notification issued. That is, this notification overrides 11/2017-CT(R). As it is optional, registered person should carefully consider the conditions before opting for the same. `*

*This facility and composition under section 10 operate as mutually exclusive. Thus, traders and manufacturers of goods and restaurant service providers who are eligible for composition (even if not opted) will not enter this facility.*

[\[Notification No. 2/2019-Central Tax \(Rate\) dated 07<sup>th</sup> March, 2019\]](#)

### **Clarification related to treatment of sales promotion scheme under GST**

The Central Government vide [Circular No. 92/11/2019-GST dated 07<sup>th</sup> March, 2019](#) clarified the following issues raised with respect to tax treatment of sales promotion schemes under GST :-

#### **1. Free samples and gifts**

Since the consideration is an important element of the definition supply, therefore the samples which are supplied free of cost, without any consideration, do not qualify as “supply” under GST, except where the activity falls within the ambit of Schedule I of the said Act.

Further, clause (h) of sub-section (5) of section 17 of the said Act clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples. However, where the activity of distribution of gifts or free samples falls within the scope of “supply” as per Schedule I of the said Act, the supplier would be eligible to avail of the ITC.

#### **2. Buy one get one free offer**

It may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost” without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per section 8 of the said Act. And, ITC shall be available to the supplier in relation to such supply.

#### **3. Discounts including ‘Buy more, save more’ offers**

Discounts offered by the suppliers to customers including staggered discount under „Buy more, save more” scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount. Further, the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply.

#### **4. Secondary Discounts**

Value of supply shall not include any discount by way of issuance of credit note(s), except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied. There is no impact on availability or otherwise of ITC in the hands of supplier.



*Comment: This is a much needed clarification that is issued before filing Annual Returns. Financial / commercial credit notes are now well understood and permitted except that output tax adjustment is clearly barred if the conditions of 15(3) are not satisfied. Although credit to Supplier is not restricted, there seems to be no mention of effect under rule 37 to Recipient when such financial / commercial credit notes are issued.*

*[Circular No. 92/11/2019-GST dated 07<sup>th</sup> March, 2019]*

### **TCS would not be includible in the value of supply under GST**

The Central Government vide [Corrigendum to Circular No. 76/50/2018-GST dated 31st December, 2018](#) has clarified that Tax collection at source (TCS) is not a tax on goods but an interim levy on the possible “income” arising from the sale of goods by the buyer and to be adjusted against the final income- tax liability of the buyer. Accordingly, for the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

*Comment: It is a welcome relief that Government has issued this Corrigendum that ‘taxable value’ under section 15 will not include TCS imposed under Income-tax Act. With TCS having been introduced on certain new articles like motor cars, the previous circular had caused lot of distress to industry.*

*[Corrigendum to Circular No. 76/50/2018-GST dated 31st December, 2018]*