

# RECENT AMENDMENTS IN GST LAW

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On:  
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## AMENDMENT ACT

- ⌚ GST legislation has been amended vide the CGST (Amendment) Act, 2018 and IGST (Amendment) Act, 2018.
- ⌚ Both the Acts were enacted on 30.08.2018 and were to be made effective from the notified date.
- ⌚ Both the Act were made *effective as on 01.02.2019* vide notification no. 02/2019 – CT dated 29.01.2019 and notification no. 01/2019 – IT dated 29.01.2019 respectively.
- ⌚ Except the following provisions of CGST Amendment Act:
  - Section 8(b),
  - Section 17,
  - Section 18,
  - Section 20(a),
  - Section 28(b)(i) and
  - Section 28(c)(i)

## AMENDMENT IN SCOPE OF SUPPLY (Section 7)

- ⌚ 7 scope of supply
- ⌚ (1) For the purposes of this Act, the expression “supply” **includes-**
- ⌚ ...
- ⊖ ~~(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II~~
- ⌚ (1A) *where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.*

w.e.f. 1<sup>st</sup> July, 2017

- Earlier the term supply was defined to include activities specified in Schedule II of the CGST Act. All activities specified in Schedule II were deemed to be supply.
- Post amendment the activities specified in Schedule II are no longer deemed to be supply.

## AMENDMENT IN SCOPE OF SUPPLY (Section 7)

- ⌚ *Section 7 (3) Subject to the provisions of ~~sub-sections (1) and (2)~~ **sub-sections (1), (1A) and (2)**, the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—*
- *(a) a supply of goods and not as a supply of services; or*
  - *(b) a supply of services and not as a supply of goods.*

## SCHEDULE I – ENTRY 4

### 🕒 Schedule I

- 4. *Import of services by a ~~taxable person~~ person from a related person or from any of his other establishments outside India, in the course or furtherance of business.*

### 🕒 *Schedule II : Activities or transactions to be treated as supply of goods or supply of services (w.e.f. 01/07/2017)*

## SCHEDULE III

### ☹ Schedule III: Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

...

☹ 7. *Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.*

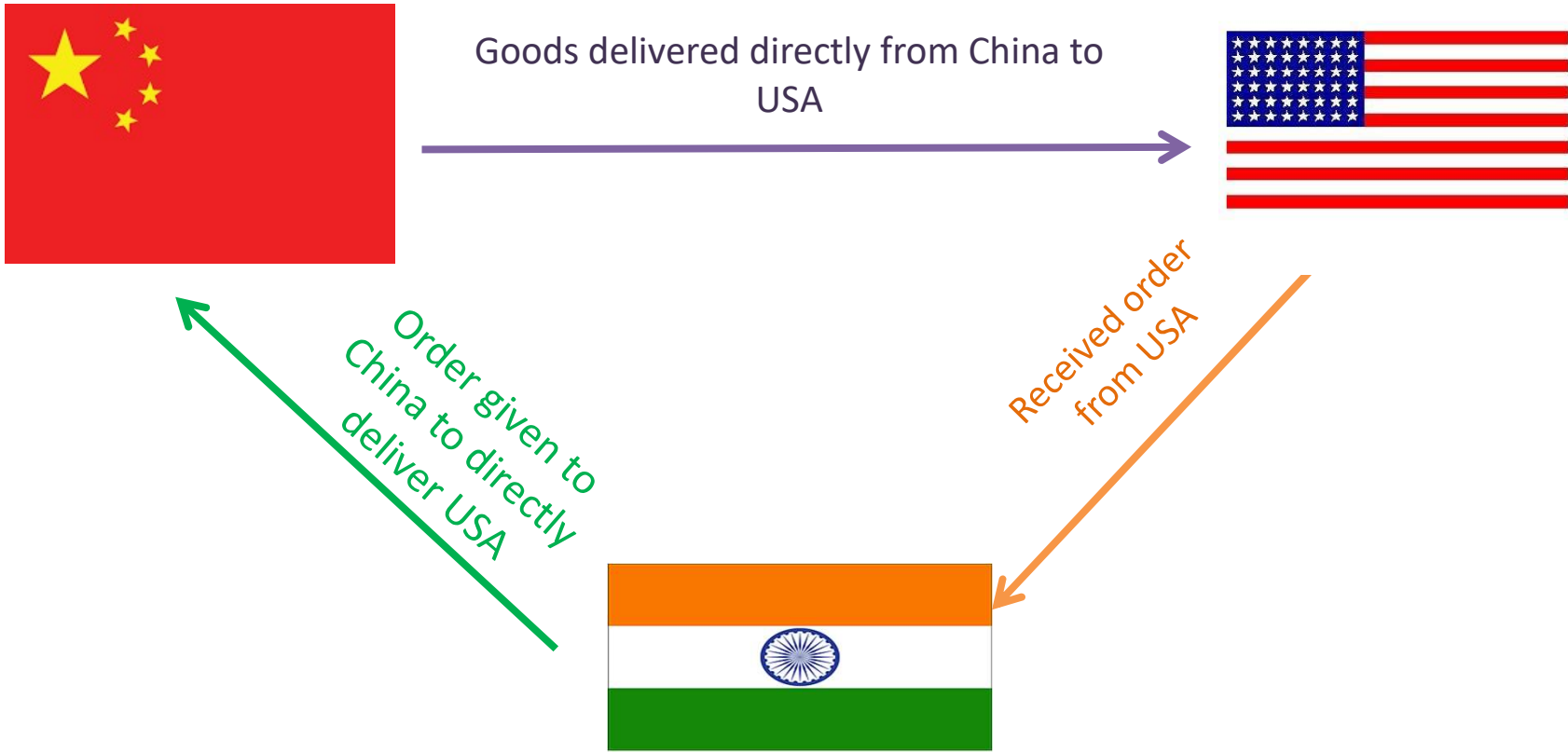
☹ 8. (a) *Supply of warehoused goods to any person before clearance for home consumption;*

*(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.*

– *Explanation 1.—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.*

– *Explanation 2.—For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.'*

# OUT & OUT TRANSACTION



## Schedule III

- ⌚ Whether amendment to Schedule III is prospective or retrospective amendment?
  - Circular No. 03/01/2019 dated 25.05.2018 clarified that IGST shall be paid once i.e. on final clearance of WHed goods. Now, vide Circular No. 04/01/2019 dated 01.02.19, Circular of May, 2018 is rescinded
  
- ⌚ CGST and SGST discharged/reported for supply of warehoused goods while being deposited in customs bonded WH from July, 2017 to March, 2018 would be accepted as one-time exception due to non-availability of appropriate facility on GSTIN portal (Circular No. 91/10/2019 dtd. 18.02.19)



## SCHEDULE III – Not an Exempt Supply for ITC

- ⊗ *The following explanation added in 17(3):*
- ⊗ *(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*
  - *Explanation.—For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.*

## RCM ON SUPPLY BY URD TO RD [Section 9(4)]

~~(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.~~

“(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.”

## RCM ON SUPPLY BY URD TO RD – Relevant Notifications

- ⊗ **Notification No. 08/2017 CT(R) dated 28<sup>th</sup> June, 2017** exempts intra-State supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon under section 9(4) of the CGST Act, 2017 except where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds five thousand rupees in a day
- ⊗ **Notification No. 38/2017 CT(R) dated 13<sup>th</sup> October, 2017** omits the exception and provides that the benefit of notification 08/2017 shall apply to all registered persons till 31<sup>st</sup> March, 2018
- ⊗ **Notification No. 10/2018 CT(R) dated 23<sup>rd</sup> March, 2018** further extended the benefit of notification 08/2017 upto 30<sup>th</sup> June, 2018
- ⊗ **Notification No. 12/2018 CT(R) dated 29<sup>th</sup> June, 2018** further extended the benefit of notification 08/2017 upto 30<sup>th</sup> September, 2018
- ⊗ **Notification No. 22/2018 CT(R) dated 6<sup>th</sup> June, 2018** further extended the benefit of notification 08/2017 upto 30<sup>th</sup> September, 2019

## DOCTRINE OF PROMISSORY ESTOPPEL

- ⌚ Now the ***notification no. 01/2019 CT(R)*** dated 29<sup>th</sup> January, 2019 rescinds the principal notification no. 8/2017
- ⌚ Since the Amendment Act now provides that RCM will be applicable only to notified class of registered persons on specified transaction
- ⌚ Therefore, such rescinding action has no impact till the time any class of registered persons are notified.
- ⌚ However, if any notification regarding this is issued prior to 30<sup>th</sup> September, 2019, it may amount to 'taking away the benefit already given by extending exemption till 30<sup>th</sup> September, 2019'
- ⌚ Whether Doctrine of Promissory Estoppel applies in such cases?

## AMENDMENT IN COMPOSITION LEVY – SECTION 10(1)

- ⊗ (1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, ~~in lieu of the tax payable by him, an amount calculated at such rate~~ *in lieu of the tax payable by him under sub-section (1) of section 9, an amount calculated at such rate* as may be prescribed , but not exceeding,—
- ⊗ ...
- ⊗ Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding ~~one crore rupees~~ *one crore and fifty lakh rupees*, as may be recommended by the Council.
- ⊗ *Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher*

## AMENDMENT IN COMPOSITION LEVY – SECTION 10(2)

- ⌚ (2) The registered person shall be eligible to opt under sub-section (1), if:—
  - ~~— (a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;~~
  - (a) save as provided in sub-section (1), he is not engaged in the supply of services;

## AMENDMENT IN TIME OF SUPPLY [SECTION 12 & 13]

- ⌚ 12(2) The time of supply of goods shall be the earlier of the following dates, namely:—
  - (a) the date of issue of invoice by the supplier or the last date on which he is required, under ~~sub-section (1)~~ of section 31, to issue the invoice with respect to the supply; or
- ⌚ 13(2) The time of supply of services shall be the earliest of the following dates, namely:—
  - (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed ~~under sub-section (2)~~ of section 31 or the date of receipt of payment, whichever is earlier; or
  - (b) the date of provision of service, if the invoice is not issued within the period prescribed ~~under sub-section (2)~~ of section 31 or the date of receipt of payment, whichever is earlier; or

## DEFINITION OF PLACE OF BUSINESS

**Section 2. (85) “place of business” includes—**

- ⊙ (a) a place from where the business is ordinarily carried on, and includes
  - a warehouse,
  - a godown or
  - any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- ⊙ (b) a place where a taxable person maintains his books of account; or
- ⊙ (c) a place where a taxable person is engaged in business through an agent, by whatever name called





# INPUT TAX CREDIT

## ITC EVEN IN CASE OF BILL TO SHIP TO

- ⊗ (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—
  - (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
  - (b) he has received the goods or services or both.
- ~~⊗ Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;~~
- ⊗ *Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—*
  - (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
  - (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person

## Amendment of Section 17(5)

- ~~⊖ (5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—~~
- ~~— (a) motor vehicles and other conveyances except when they are used—~~
    - ~~• (i) for making the following taxable supplies, namely:—~~
      - ~~— (A) further supply of such vehicles or conveyances ; or~~
      - ~~— (B) transportation of passengers; or~~
      - ~~— (C) imparting training on driving, flying, navigating such vehicles or conveyances;~~
    - ~~• (ii) for transportation of goods;~~
  - ~~⊖ (b) the following supply of goods or services or both—~~
    - ~~— (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;~~
    - ~~— (ii) membership of a club, health and fitness centre;~~
    - ~~— (iii) rent a cab, life insurance and health insurance except where—~~
      - ~~• (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or~~
      - ~~• (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and~~
    - ~~— (iv) travel benefits extended to employees on vacation such as leave or home travel concession;~~

## Amendment of Section 17(5)

- ☹ *(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—*
  - *(A) further supply of such motor vehicles; or*
  - *(B) transportation of passengers; or*
  - *(C) imparting training on driving such motor vehicles*
- ☹ *(aa) vessels and aircraft except when they are used—*
  - *(i) for making the following taxable supplies, namely:—*
    - *(A) further supply of such vessels or aircraft; or*
    - *(B) transportation of passengers; or*
    - *(C) imparting training on navigating such vessels; or*
    - *(D) imparting training on flying such aircraft;*
  - *(ii) for transportation of goods;*

## Amendment of Section 17(5)

- ⌚ *(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):*
  - *Provided that the input tax credit in respect of such services shall be available—*
  - *(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;*
  - *(ii) where received by a taxable person engaged—*
    - *(I) in the manufacture of such motor vehicles, vessels or aircraft; or*
    - *(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;*

## Amendment of Section 17(5)

- ⌚ (b) *the following supply of goods or services or both—*
- *(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:*  
*Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;*
  - *(ii) membership of a club, health and fitness centre; and*
  - *(iii) travel benefits extended to employees on vacation such as leave or home travel concession:*  
*Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.*

# REGISTRATION

## AMENDMENT IN SECTION 22

- ⌚ **22. (1)** *Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:*
- ⌚ *Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees*
- ⌚ *Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified*



## REMOVAL OF CERTAIN STATES FROM SPECIAL CATEGORY

**Explanation to Section 22.** – For the purpose of this section,-

- ⊗ (i) the expression “aggregate turnover” shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;
- ⊗ (ii) the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;
- ⊗ (iii) the expression “special category States” shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution except the State of Jammu and Kashmir and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.

## Special Category States for the purpose of Section 22

### Before Amendment

- Special Category States as per Article 279(4)(g) of the Constitution:
  - Arunachal Pradesh,
  - Assam,
  - ~~– Jammu and Kashmir,~~
  - Manipur,
  - Meghalaya,
  - Mizoram,
  - Nagaland,
  - Sikkim,
  - Tripura,
  - Himachal Pradesh and
  - Uttarakhand

### After Amendment

- Special Category States as per Article 279(4)(g) of the Constitution:
  - ~~– Arunachal Pradesh,~~
  - ~~– Assam,~~
  - ~~– Jammu and Kashmir,~~
  - Manipur,
  - ~~– Meghalaya,~~
  - Mizoram,
  - Nagaland,
  - ~~– Sikkim,~~
  - Tripura,
  - ~~– Himachal Pradesh and~~
  - ~~– Uttarakhand~~

## ECO TO OBTAIN REGISTRATION ONLY IF IT IS LIABLE TO DEDUCT TCS U/S. 52

**24.** Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

☒ ...

☒ **(x) every electronic commerce operator who is required to collect tax at source under section 52;**

☒ ...



## ECO LIABLE TO DEDUCT TCS U/S. 52

**Section 52.** (1) *Notwithstanding anything to the contrary contained in this Act,*

- ⌚ every electronic commerce operator (hereafter in this section referred to as the “operator”),
  - not being an agent,
- ⌚ shall collect an amount at such rate not exceeding one per cent., as may be notified by the Government on the recommendation of the Council,
- ⌚ of the net value of taxable supplies
- ⌚ made through it by other suppliers
- ⌚ where the consideration with respect to such supplies is to be collected by the operator

## AMENDMENT IN SECTION 25

- ⊗ **25.** (1) *Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:*
- ⊗ *Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.*
- ⊗ *Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory*

- SEZ unit or developer having place of business outside SEZ area (in same state / union territory) have to take separate registration for such place of business in the same state.
- 1<sup>st</sup> Proviso to Rule 8 deleted vide not. no. 03/2019-CT dated 29.01.19

## AMENDMENT IN SECTION 25

⌚ **25.** (2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

~~— Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.~~

— Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed

- Definition of business vertical is omitted.
- A person having multiple places of business in a State or Union Territory will be allowed to take separate registration for each of such place of business. Earlier multiple registration were allowed in same State or Union Territory only for business verticals
- [Rule 11](#) prescribes the condition. It was substituted vide notification no. 03/2019-CT dated 29.01.2019

## DEFINITION OF PLACE OF BUSINESS

**Section 2. (85) “place of business” includes—**

- ⊙ (a) a place from where the business is ordinarily carried on, and includes
  - a warehouse,
  - a godown or
  - any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- ⊙ (b) a place where a taxable person maintains his books of account; or
- ⊙ (c) a place where a taxable person is engaged in business through an agent, by whatever name called

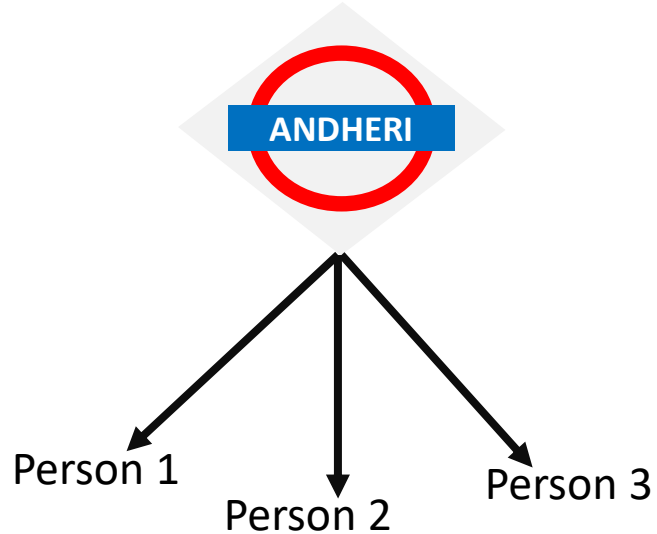
## ISSUES

- ⌚ When can a place of business be called a separate place of business?
  - Dictionary meaning of 'place'
    - As per Oxford Dictionary - A particular position, point, or area in space; a location
  - Can we resort to Excise Laws?
  
- ⌚ Whether one has to surrender the registration if the registration is already taken under business vertical?
  - If surrendering registration is required, what would be the implications on ITC?
  - Whether one has to fulfil compliances as required for surrender of registration?
  
- ⌚ In case there are more than one registration in one state, what will be the turnover base for ITC distribution?



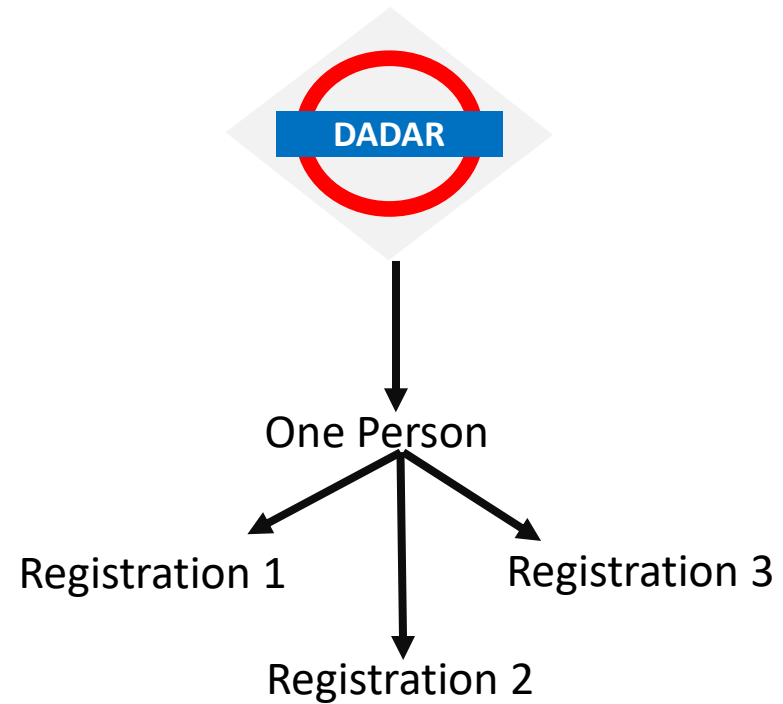
## SEPARATE REGISTRATION?

Example 1



**Whether multiple person can take registration at single place of business?**

Example 2



**Whether one person can take multiple registration?**

## Rule 11: Separate registration for multiple places of business within a State or a Union territory

- ⌚ **Rule 11 (1)** *Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business under sub-section (2) of section 25 shall be granted separate registration in respect of each such place of business subject to the following conditions, namely:-*
- (a) such person has more than one place of business as defined in clause (85) of section 2;
  - (b) such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business;
  - (c) all separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.

## Rule 11: Separate registration for multiple places of business within a State or a Union territory

- ⌚ *Explanation. - For the purposes of clause (b), it is hereby clarified that where any place of business of a registered person that has been granted a separate registration becomes ineligible to pay tax under section 10, all other registered places of business of the said person shall become ineligible to pay tax under the said section.*
- ⌚ *(2) A registered person opting to obtain separate registration for a place of business shall submit a separate application in FORM GST REG-01 in respect of such place of business.*
- ⌚ *(3) The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this rule.*

## Rule 41A: Transfer of credit on obtaining separate registration for multiple place of business within a State/UT

- ⌚ If obtained separate registration and intend to transfer, either wholly or partly unutilised ITC to any or all newly registered POB shall furnish GST ITC-02A in 30 days

- ⌚ How to distribute ITC?

### Proviso to Rule 41A:

- *Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.*
- *Explanation.- For the purposes of this sub-rule, it is hereby clarified that the 'value of assets' means the value of the entire assets of the business whether or not input tax credit has been availed thereon.*

## Suspension of Registration (Section 29)

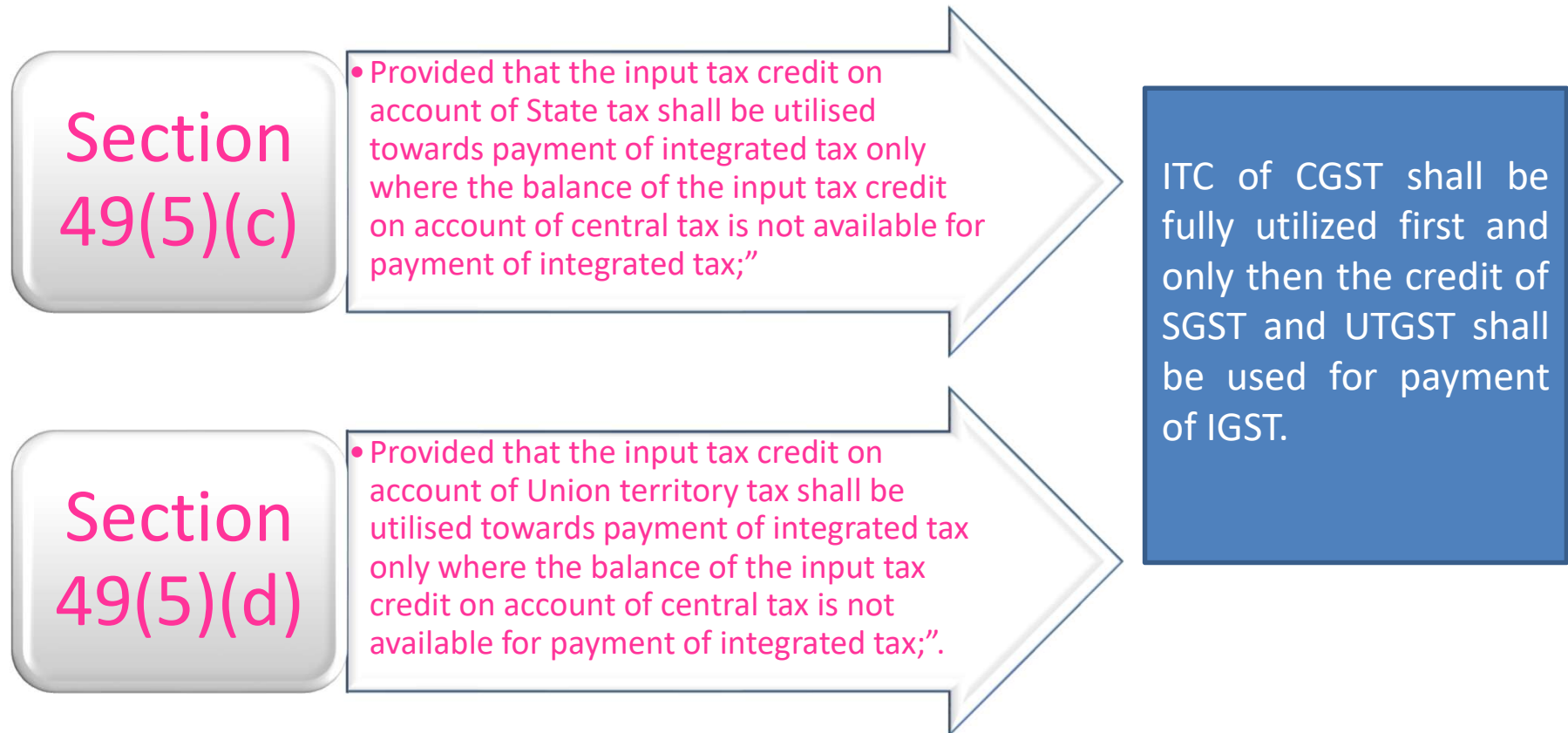
- ⊗ During pendency of proceedings relating to cancellation of registration, registration may be suspended (Section 29 (1)(c) and Section 29 (2) – Proviso inserted)
  
- ⊗ Rule 21A of CGST Rules
  - Deemed suspension from the date of application for cancellation
  - Suspension from the date of submission of application or date from which cancellation is sought, whichever is later
  - Suspension of registration by Proper Officer as determined by him after giving opportunity of being heard
  - Post suspension, no taxable supplies to be made and no returns to be furnished under Section 39
  - Revocation of suspension on completion of proceedings
  - Revocation to be effective from the date on which suspension come into effect

## SINGLE CREDIT/DEBIT NOTE FOR MULTIPLE INVOICES

- 34(1) ~~Where a tax invoice has~~ *Where one or more tax invoices have* been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient ~~a credit note~~ *one or more credit notes for supplies made in a financial year* containing such particulars as may be prescribed.
- 34(3) ~~Where a tax invoice has~~ *Where one or more tax invoices have* been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient ~~a debit note~~ *one or more debit notes for supplies made in a financial year* containing such particulars as may be prescribed.

## AMENDMENT TO SECTION 49 AND ITS IMPACT

### 🕒 Section 49: Payment of tax, interest, penalty and other amounts



## Newly inserted Section 49A & 49B

### Section 49A

- Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

### Section 49B

Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.”



## Impact and analysis of Section 49A and 49B

IGST Liability	CGST Liability	SGST Liability	
IGST Credit	IGST Credit*	IGST Credit	
CGST Credit	CGST Credit	SGST Credit	
SGST/UTGST Credit	SGST cannot be utilized	CGST cannot be utilized	Credit be

\*IGST Credit to be utilized first against all liabilities

This section gives power to the Government to prescribe any specific order of utilization of ITC of any tax for payment of any tax

## PRACTICAL IMPACT OF SECTION 49A

Particulars	Amount	IGST	CGST	SGST
Inter State Purchase	10,00,000	1,80,000	-	-
Intra State Purchases	10,00,000	-	90,000	90,000
Intra State Sales @ 10% Margin	22,00,000	-	1,98,000	1,98,000

### IMPACT ON CGST

Particulars	Upto 31-1-2019	Particulars	1-2-2019 onwards
Total Output tax	1,98,000	Total Output tax	1,98,000
Less: CGST	90,000	Less: IGST	1,80,000
Less: IGST	1,08,000	Less: CGST	18,000
Balance of IGST	72,000	Balance of CGST	72,000

## PRACTICAL IMPACT OF SECTION 49A

### 🕒 IMPACT ON SGST

Particulars	Upto 31-1-2019	Particulars	1-2-2019 onwards
Total Output tax	1,98,000	Total Output tax	1,98,000
Less: SGST	90,000	Less: SGST	90,000
Less: IGST	72,000	<b>Balance payable in Cash</b>	<b>1,08,000</b>
<b>Payable in cash</b>	<b>36,000</b>		
Balance ITC	NIL	Balance ITC of CGST	72,000

## BENEFIT OF REFUND EXTENDED TO ALL EXPORTS

- 🕒 *Section 54: Refund of tax*
- 🕒 *54(8)(a) refund of tax paid on ~~zero-rated supplies~~ export of goods or services or both or on inputs or input services used in making such ~~zero-rated supplies~~ exports.*

The refundable amount, relating to tax paid on zero-rated supply of goods or services or both or inputs or input services used in making such zero-rated supply, shall be paid to the applicant instead of being credited to the fund. The same provision shall be applicable now only to export of goods or services or on inputs or input services used in making such exports. However, now, the same is not applicable to supplies made to SEZ Units or SEZ Developers

## AMENDMENT IN EXPLANATION TO SECTION 54

- ⊗ **In 2<sup>nd</sup> explanation to Section 54**
- ⊗ *2(c)(i) receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, where the supply of services had been completed prior to the receipt of such payment; or*
- ⊗ ....
- ⊗ ~~*2(e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises*~~
- ⊗ *2(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;*

**Refund on account of export of services can be claimed on receipt of foreign exchange as well as Indian rupees, wherever permitted by the Reserve Bank of India.**

**In case of refund claim of inverted duty structure, relevant date shall be the due date of filing GST return for the period in which such claim arises.**

**Export without payment shall now have only one 'relevant date'**

## AMENDMENT IN SECTION 39(1) – Not notified to be effective

- ⊗ *Section 39: Furnishing of returns*
- ⊗ *(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, ~~in such form and manner as may be prescribed~~ in such form, manner and within such time as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed ~~on or before the twentieth day of the month succeeding such calendar month or part thereof.~~*
- ⊗ *Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein*

- Specific provision for due date of payment of taxes and filing of GST return on or before the twentieth day of the month succeeding such calendar month or part thereof is omitted.
- Government is empowered to notify certain classes of registered persons who shall furnish returns quarterly.

## AMENDMENT IN SECTION 39(1) – Not notified to be effective

- ⌚ *Proviso inserted to Section 39 (7):*
- ⌚ *Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein*

## INSERTION OF NEW SECTION 43A – Not notified to be effective

- ⌚ (1) *Notwithstanding anything contained in sub-section (2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.*
- ⌚ (2) *Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.*
- ⌚ (3) *The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.*
- ⌚ (4) *The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent. of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.*



## INSERTION OF NEW SECTION 43A – Not notified to be effective

- ⊙ *(5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.*
- ⊙ *(6) The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the details have been furnished under sub-section (3) or sub-section (4) but return thereof has not been furnished.*
- ⊙ *(7) For the purposes of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of tax or input tax credit wrongly availed not exceeding one thousand rupees.*
- ⊙ *(8) The procedure, safeguards and threshold of the tax amount in relation to outward supplies, the details of which can be furnished under sub-section (3) by a registered person,—*
  - (i) within six months of taking registration;*
  - (ii) who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount,*  
*shall be such as may be prescribed.*

## AMENDMENT TO SECTION 79 AND SECTION 107

- 🕒 *Section 79: Recovery of tax*
- 🕒 *Explanation.—For the purposes of this section, the word person shall include “distinct persons” as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.*

The word “person” now includes “distinct person” to ensure speedy recovery of tax from other establishments registered in different States or Union Territories.

## MAXIMUM CAP OF PRE-DEPOSIT IN FILING APPEAL

- ⌚ *Section 107: Appeals to Appellate Authority*
- ⌚ *107(6)(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, **subject to a maximum of twenty-five crore rupees**, in relation to which the appeal has been filed.*
  
- ⌚ *Section 112: Appeals to Appellate Tribunal*
- ⌚ *(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, **subject to a maximum of fifty crore rupees**, in relation to which the appeal has been filed.*

A maximum cap for filing appeal is inserted:

- Before Appellate Authority: Rs. 25 crore
- Before Appellate Tribunal: Rs. 50 crore

## SECTION 129 – INCREASE IN TIME LIMIT FOR PAYING TAX

- 🕒 *Section 129: Detention, seizure and release of goods and conveyances in transit*
- 🕒 *(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within ~~seven days~~ **fourteen days** of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130*

The breathing period before initiating of proceedings under section 130 has been increased by 7 more days

## SECTION 140 - AMENDED W.E.F. 01-07-2017

- ⊗ Section 140: Transitional arrangements for input tax credit
- ⊗ (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit *of eligible duties* carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed
- ⊗ Explanation 1.—For the purposes of ~~sub-sections (3), (4)~~ *sub-sections (1), (3), (4)* and (6), the expression “eligible duties” means—
- ⊗ Explanation 2.—For the purposes of ~~sub-section (5)~~ *sub-sections (1) and (5)*, the expression “eligible duties and taxes” means—
- ⊗ ~~(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;~~



NOT YET  
NOTIFIED



NOT YET  
NOTIFIED

## SECTION 140 - AMENDED W.E.F. 01-07-2017

- 🕒 Section 140: Transitional arrangements for input tax credit

....

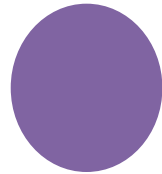
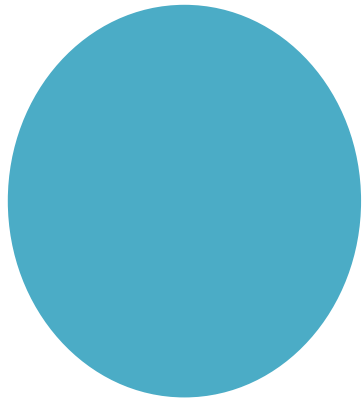
- 🕒 *Explanation 3.—For removal of doubts, it is hereby clarified that the expression “eligible duties and taxes” excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.’*

- **Issues:**
- **In view of this amendment, credit of education cess, secondary and higher education cess and Krishi Kalyan cess will not be available?**
- **Whether interest on reversal of cess already taken needs to be paid from the date of availing credit or from the date when the Amendment Act is made effective?**
- **Whether retrospective amendment can be made and benefits given earlier can be taken back?**

## AMENDMENT ACT

- ⌚ Section 143: Job work procedure:
- ⌚ *2<sup>nd</sup> proviso inserted Section 143(1)(b)*
- ⌚ *Provided further that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively*

The time limit for returning inputs sent on job work basis can be extended by the Commissioner for a period of one more year and the same in case of capital goods can be extended for a period of further two year.



# OTHER MISC. AMENDMENTS

3/2/2019

CA Prerana Shah



## Other Misc. Amendments

- ⌚ Amendment to Section 2 (4) of CGST Act made to remove anti-profiteering authority from the definition of ‘adjudicating authority’
  - What is the remedy if anti-profiteering authority’s order is against assessee?
- ⌚ Definition of ‘Services’ is amended to include an explanation to clarify that ‘services’ includes facilitating or arranging transactions in securities (Section 2 (102))

## AMENDMENT TO SECTION 52

- ⌚ *52 (9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37 or **section 39**, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.*
  - Now onwards, the data furnished by TCS collector will also be matched with FORM GSTR – 3B

## NO AUDIT BY GOVERNMENT DEPARTMENT

- ⊗ *Section 35(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.*
  
- ⊗ *Insertion of proviso w.e.f. 01.02.19:*
- ⊗ *Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force*

# IGST AMENDMENTS

## IGST Amendment Act

- ⌚ 'Export of services' requires realization in convertible foreign exchange. Now, definition is amended to allow realization in Indian Rupees wherever permitted by RBI (Section 2 (6))
  - Rationale provided by GST Council: Particularly realization for export to Nepal and Bhutan is received in INR as per RBI regulations. Now, the same shall be treated as export of services

## IGST Amendment Act

- ⌚ Amendment in Section 12 (8)
  - If location of supplier and recipient is in India and
  - goods are transported to a place outside India
  - POS shall be place of destination of such goods
  
- ⌚ Notification No. 10/2017-IGST (R) dated 28.06.2017 (Sr. No. 20B)
  - Exemption till 30.09.19 to services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India

## IGST Amendment Act

- ⌚ Amendment in Second proviso to Section 13 (3) (a)
  - Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any ~~other~~ use in India, other than that which is required for such repairs or treatment or process;
  
- ⌚ If location of supplier or recipient is outside India and goods are temporarily imported for not only repairs but also for other treatment/process, POS shall be outside India

# AMENDMENT TO IGST RULES



## Rule 4 & IGST Rules – Amended vide Not. No. 4/2018-IGST dated 31.12.2018

*Immovable Property, accommodation, boat etc. related services (Rule 4 for Section 12 (3) and Rule 8 for Section 13 (7) read with 13 (4))*

- 🕒 Immovable Property or boat or vessel located in more than 1 State or UT
  - If contract – supply of service in respective State/UT in proportion of value for services separately collected or determined as per Agreement
  - If no contract
    - Lodging accommodation by a hotel, inn, guest house, club or campsite etc. where such property is not a single property in two States and ancillary services – **In proportion of nights stayed**
    - All other services and also lodging accommodation services where property is a single property in two States and ancillary services – **In proportion to the area of immovable property**
    - Lodging accommodation by a house boat or other vessel and ancillary services – **In proportion to the time spent by boat or vessel**

## IGST Rules – Amended vide Not. No. 4/2018-IGST dated 31.12.2018

*Organising of event, sponsorship and ancillary services (Rule 5 for Section 12 (7))*

*Admission to or organization of event related services (Rule 9 for Section 13 (7) r.w. Section 13 (5))*

- ⌚ Event is held in India at more than 1 State or UT and consolidated amount is charged for supply of services
  - If contract – supply of service in respective State/UT in proportion to value for services separately collected or determined as per Agreement
  - If no contract – Determine by application of GAAP Generally Accepted Accounting Principles

## IGST Rules – Amended vide Not. No. 4/2018-IGST dated 31.12.2018

### *Leased circuit related services (Rule 6 for Section 12 (11))*

- 🕒 Leased circuits installed at more than 1 State or UT and consolidated amount is charged for supply of services
  - If contract – supply of service in respective State/UT in proportion of value for services separately collected or determined as per Agreement
  - If no contract – **In proportion to no. of points lying in State/UT**
    - Determine no. of points in a circuit as under:
    - If circuit between 2 points or places – starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points
    - If benefit of leased circuit is available at Intermediate point – Intermediate point or place will also constitute a point

## IGST Rules – Amended vide Not. No. 4/2018-IGST dated 31.12.2018

### *Performance based services (Rule 7 for Section 13 (7) r.w. Section 13 (3))*

- ⌚ If contract – supply of service in respective State/UT in proportion of value for services separately collected or determined as per Agreement
- ⌚ If no contract
  - If services are supplied on same goods - Equally dividing value of service in each State/UT where service is performed
  - If services are supplied on different goods – Ratio of invoice value of goods in each State/UT on which service is performed
  - If services are supplied to individuals – By applying generally accepted accounting principles (GAAP)

# RECENT UPDATES

## RECENT NOTIFICATION/ORDER/CIRCULAR/S

- ⌚ Extension in the due date for availing ITC on the invoices or debit notes issued during the FY 2017-18 upto the due date of furnishing return u/s. 39 for the month of March 2019 (**Order No. 02/2018-CT dt. 31-12-2018**)
- ⌚ The due date of furnishing of annual returns in FORM GSTR-9, GSTR-9A and reconciliation statement in FORM GSTR-9C for FY 2017-18 extended to 30.06.2019 (**Order No. 03/2018-CT dt. 31-12-2018**)
- ⌚ Waiver of late fees leviable u/s. 47 on delayed furnishing of returns for the period July-17 to Sept-18 within due date but furnishing the same between 22/12/2018 to 31/03/2019 (**Not. No. 76/2018 dt. 31-12-2018**)
- ⌚ Exemption from deducting tax at source to supplies made by Government Departments and PSUs to other Government Department and vice-versa. (**Not. No. 73/2018 dt. 31-12-2018**)

## RECENT NOTIFICATION/ORDER/CIRCULAR/S

- ⌚ Inter-state supply to URD to be mentioned in GSTR-3B alongwith in GSTR-1. Contravention shall attract penalty (***Circular No. 89/08/2019 dt. 18.02.19***)
- ⌚ Place of supply shall be mentioned on invoice alongwith the name of the State else penalty may be levied (***Circular No. 90/09/2019 dt. 18.02.19***)

# **33<sup>RD</sup> GST COUNCIL MEETING HELD ON 24.02.2019**



## GST RATE- Residential properties

BEFORE 31-03-2019

- ✓ 18%
- ✓ Land deduction 33%
- ✓ 12%
- ✓ Full ITC

FROM 01-04-2019

- ✓ 5% without ITC

## AFFORDABLE HOUSING

BEFORE 31-03-2019

- ✓ 12%
- ✓ Land 33%
- ✓ 8%
- ✓ ITC

FROM 01-04-2019

- ✓ 1% *no ITC*

## AFFORDABLE HOUSING

BEFORE 31-03-2019

- *low-cost houses*
- *up to a carpet area of 60 square metres*
- *affordable housing project*
- *infrastructure status*
- *at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI)*
- **2(k) RERA 2016**

FROM 01-04-2019

*A residential house/flat of carpet area upto 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities having value upto Rs. 45 lacs (for both metropolitan and non-metropolitan cities.)*

*Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR)*

# GST EXEMPTION ON TDR/JDA, LONG TERM LEASE (PREMIUM), FSI:

BEFORE 31-03-2019

🕒 Notification 04/2018-CT (R) dated 25-01-2018

FROM 01-04-2019

Development right  
TDR,  
JDA,  
Lease (premium),  
FSI

residential property  
on which GST is payable

## ADVANTAGES ENLISTED BY COUNCIL?

- 🕒 Are these recommendations advantageous?
  - Buyer fair price- affordable attractive 1%
  - Cash TDR, FSI, Lease premium
  - Tax structure/ compliance simple
  - **Interest protected if ITC not passed on**
  - **Unutilized ITC at the end of the project**

## INDUSTRY CONCERNS

- ⌚ Optional?
  - Constitutional aspects
- ⌚ Anti-profiteering laws
- ⌚ On going projects?
- ⌚ Whether ITC availed but not utilised will lapse?
- ⌚ What about part/full commercial projects?
- ⌚ Value of Rs. 45 lacs includes charges collected by builder, stamp duty etc.?
- ⌚ Since LDR is proposed to be exempted, whether construction service provided to land owner would be exempt?
- ⌚ What if agreement for development rights was entered prior to 01.04. 19 and possession would be given on or after 01.04.19?

# RECENT JUDGEMENTS & ADVANCE RULINGS

## Columbia Asia Hospitals Pvt. Ltd. 2018-TIOL-31-AAAR-GST

- Whether the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per section 25(4) of the CGST Act, 2017 shall be treated as supply as per entry 2 of Sch. I or it shall be treated as supply of services as per entry 1 of Sch. III?
- The Karnataka AAR held that the transaction between IMO and other units was a 'supply' under entry 2 of Sch. I. The assessee went on to appeal before AAAR wherein AAAR also affirmed the decision of AAR



## AAR ON INTERMEDIARY SERVICES

- ⊙ Service of promotion and marketing of products of overseas client is in nature of facilitating supply of products of overseas client, hence, constitutes an 'intermediary service' defined under section 2(13) of IGST Act. Thus, it automatically flows that the place of supply of such service will be in terms of section 13(8) of the IGST Act (*Toshniwal Brothers, Kar. AAR, 2019 102 taxmann.com 37*)

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3/2/2019

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