

# **Issues in Recent**

# **Changes in G S T**

**Date: Saturday, 24 February 2018**

**Presented to: J. B. Nagar Study Group**

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# Background

- Introduced from 1 July 2017 in half baked manner
- With intention to abolition multiple levy of tax on goods and services it subsumed 17 Central and State taxes
- Introduced with a Model Draft Laws followed by Final Draft Law presently we have CGST Act, IGST Act, SGST Act, UTGST Act and its rules
- Presently till December 2017 we had reviewed various amendment provided by department as advised by GST Council.
- Till December we have witnessed numerous amendments proposed by GST council and which provided following
  - Notifications:
    - Central Tax – 75 Notifications
    - Central Tax Rates – 47 Notifications
    - Integrated Tax – 12 Notifications
    - Integrated Tax Rates – 50 Notifications
    - Compensation Cess – 1 Notification
    - Compensation Cess Rate – 7 Notifications

# Background

- Circulars:
  - CGST – 26
  - IGST – 2
  - Compensation Cess – 1
- Orders:
  - CGST – 11
- FAQ's
  - General – Tweet FAQ's, Email FAQ's
  - Topic Wise FAQ's – Rates, Services, Composition Levy, etc.
  - Sectoral FAQ's - Logistics, Government Services, Gems and Jewellery, IT, Mining, E-commerce, .....etc. etc.
- Press Releases, etc.
- In today's presentation we have covered key amendments from 1<sup>st</sup> January 2018 till date as advised by GST Council in its 25 Meeting

# Coverage of following topics

- ❑ Revision in Composition Rates
- ❑ Amendments related to Returns
- ❑ Substitution / Amendment in various rates
- ❑ Exemption of Air and Ocean Freight
- ❑ Amendment in services provided to educational institutions
- ❑ Insertion of New RCM Entry – Immovable Property Related
- ❑ Change in rate of sale of old motor cars
- ❑ Time of supply for construction against transfer of development right
- ❑ Insertion of new Rule 54(1A) for Input Service Distributor
- ❑ E-Way Bill (EWB)
  - Generation of EWB in various cases
  - Validity of EWB
  - Deemed Acceptance of EWB
  - Consolidated EWB

# Revision in composition Rates

- Notification 1/18 – CT provided revision in effective rate of composition scheme under section 10 of CGST Act: *(notification. 1- CT date 01 Jan 2018)*

Dealer	Previous Rate	Revised Rate
Manufacturer	2% of the Turnover (1% CGST and 1% SGST)	1% of the Turnover (0.5% CGST and 0.5% SGST)
Trader	1% of the Turnover (0.5% CGST and 0.5% SGST)	1% of the Turnover of <u>Taxable Supplies of Goods</u> (0.5% CGST and 0.5 % SGST)

- The above notification is a welcome move to the composition taxpayers as the tax burden for the manufacturer is being reduced from 2% to 1% which makes the Micro and Small manufactures to supply to the manufactures.

# Amendments related to Returns

❑ Reduction in late fees of following Forms: *(notification. 4 to 7- CT dated 23 Jan 2018)*

Sr. No.	Form	Related to	Late Fee Reduced to
1	GSTR-1	Outward Supplies	In case of Nil Return – 20 (10 under CGST & SGST each)  Otherwise 50 (25 under CGST & SGST each)
2	GSTR-5	Non-Resident Taxable Person	
3	GSTR-5A	OIDAR	
4	GSTR-6	ISD	50 (25 under CGST & SGST each)

❑ Further, manner of filing of Summary Return in Form GSTR-3B has been amended by the department

# Substitution in various Service Rates

- Various notifications issued to substitute the original entries with the new entries. (notification. 1- CTR date 25 Jan 2018)

Service Description	Previous Rate	Substituted Rate
Composite supply of works contract as defined in 2(119) of CGST Act supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-  a civil structure or any other original works pertaining to the “In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)	18% as not specified elsewhere	12%
"Composite supply of works contract as defined in 2 (119) of CGST Act supplied by way of construction, erection, commissioning, or installation of original works pertaining to,(a) railways, <b>including</b> monorail and metro;"	NIL	12%

# Substitution in various Service Rates

- Various notifications issued to substitute the original entries with the new entries.

Service Description	Previous Rate	Substituted Rate
<p>"(ix) Composite supply of works contract as defined in 2(119) of CGST Act provided by a sub-contractor to the main contractor providing services specified in item (iii) Or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity. Entry 3 (ix) of Notification 12 – 2017 – Consolidated CTR"</p> <p>i.e.</p> <ul style="list-style-type: none"><li>- historical monument, archaeological site or remains of national importance, archaeological excavation</li><li>- a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</li><li>- a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or</li><li>- a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the CGST Act</li></ul>	18% as not specified elsewhere	12%



# Substitution in various Service Rates

- Various notifications issued to substitute the original entries with the new entries.

Service Description	Previous Rate	Substituted Rate
(ix) Composite supply of works contract as defined in 2(119) of CGST Act provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.  i.e. (vii) Composite supply of works contract as defined in 2(119) of CGST Act involving predominantly earth work (that is, constituting more than 75per cent of value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.	18% as not specified elsewhere	12%

# Substitution in various Service Rates

- Various notifications issued to substitute the original entries with the new entries.

Service Description	Previous Rate	Substituted Rate
(xi) Services by way of house-keeping, such as plumbing, carpentering, etc. where person supplying such service through electronic commerce operator is not liable for registration under section 22 (1) of CGST Act	18% - covered under supporting services	5% with No ITC or 18% with GST
(v) Transportation of natural gas, petroleum crude, motor spirit (commonly known as petrol), high speed diesel or aviation turbine fuel through pipeline  Substituted word "Natural Gas"	12% - with ITC	5% with no ITC or 18% with GST
(ii) Time charter of vessels for transport of goods.	18% as not specified elsewhere	5% - No ITC except on ships, vessels, bulk carriers & Tankers

# Substitution in various Service Rates

- Various notifications issued to substitute the original entries with the new entries.

Service Description	Previous Rate	Substituted Rate
Service of exploration, mining or drilling of petroleum crude or natural gas or both.	18%	12%
Services by way of job work in relation to -Tailoring Services	18%	5%
Services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet.	28%	18%
Services of life insurance business provided under following schemes- ..... (c) Life micro-insurance product as approved by IRDA, having max. amount of cover of two lakhs  Earlier it was limited upto 50 thousand	NIL	NIL

# Substitution in various Service Rates

- ❑ Various notifications issued to substitute the original entries / provision with the new entries / provision.
- ❑ It appears that such substituted entries / provision has a retrospective impact?
  - Reference can be made to judgement of Sir Govardhan M. [Writ Petition No. 38144/2011(S-KAT)] – Karnataka High Court

*“Para 27. It is well-settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. The principle is also well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the Amending Act came into force. When the legislature amends an existing provision in a statute by way of substitution, the effect is the substituted provision stands repealed and the amended provision is substituted in the place of earlier provision in the earlier Act, as if the substituted provision is there in the earlier act from the inception. By express provision or by implication if it is not made clear that it is prospective in nature the said amended provision comes into effect from the date of the earlier Act. But it is not an invariable Rule. If such an interpretation is.....*

# Substitution in various Service Rates

*.....given, if it leads to repugnancy, inconsistency or absurdity, then the said general rule is not followed. In certain situations, the court having regard to the purport and object sought to be achieved by the Legislature may construe the word "substitution" as an "amendment" having a prospective effect. If the amendment Act expressly states that the substituted provision shall come into force from the date the amendment comes into force, the said provision is prospective in nature. Then it is not open to the Court by way of interpretation to give retrospective effect to such provision. Ultimately to decide whether these provisions are prospective or retrospective, it is the intention of legislature which is the sole guide. If the procedure adopted for amendment is substitution and in the Amended Act it is specifically stated that the substituted provisions come into effect from the date the amended Rules or Act came into force, the intention of the legislature is clear. On the pretext that it is the case of substitution, the effect cannot be given to that substituted provision from the date of the earlier statute. It has to be necessarily from the date the amended rules came into force."*

# Exempting Export Air & Ocean Freight

- Exempting Air freight and Ocean Freight from 25 January 2018 (*notification. 2-CTR date 25 Jan 2018*)

SR. No.	Chapter, Heading	Description of Services	Rate (per cent.)	Condition
19A	Heading 9965	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.	Nil	Exemption Applicable till 30 September 2018
19B	Heading 9965	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India	Nil	Exemption Applicable till 30 September 2018

- For the purpose of Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases as per Rule 43 of CGST “the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.”

# Exempting Air freight & Ocean Freight

## □ Issue

- Whether Bill of Supply is required to be issued in case of Exempted Export Freight?
- Whether Tax Invoice issued shall suffice for not reverting ITC against Export Freight – Ocean?
- Whether services associated with Ocean / Air Freight can also be said to be exempt?

# Services provided to educational institutions

❑ Inserted Under Entry 66 of Notification 12/2017 *(notification. 2- CTR date 25 Jan 2018)*

(b) Services Provided to an Educational Institution is NIL Rated—

“(v) supply of online educational journals or periodicals:”

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Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-

- (i) pre-school education and education up to higher secondary school or equivalent; or
- (ii) education as a part of an approved vocational education course.”

- It appears that GST shall be leviable on the services provided upto pre-school education and on approved vocational education course.



# Insertion of New RCM Entry – Renting of Immovable Property

## ❑ Insertion of new entry – 5A

(notification. 3- CTR date 25 Jan 2018)

Sr. No.	Category of Supply of Services	Supplier of Service	Recipient of Service
5A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the CGST Act	Central Government, State Government, Union Territory or local Authority	Any person registered under CGST Act

## ❑ Issues:

- What shall be implication wherein the contract has already been executed before insertion of such RCM entry?
- What shall be situation wherein full amount is paid in advance, however the service is yet to be provided?

# Change in Rate of sale of old motor cars

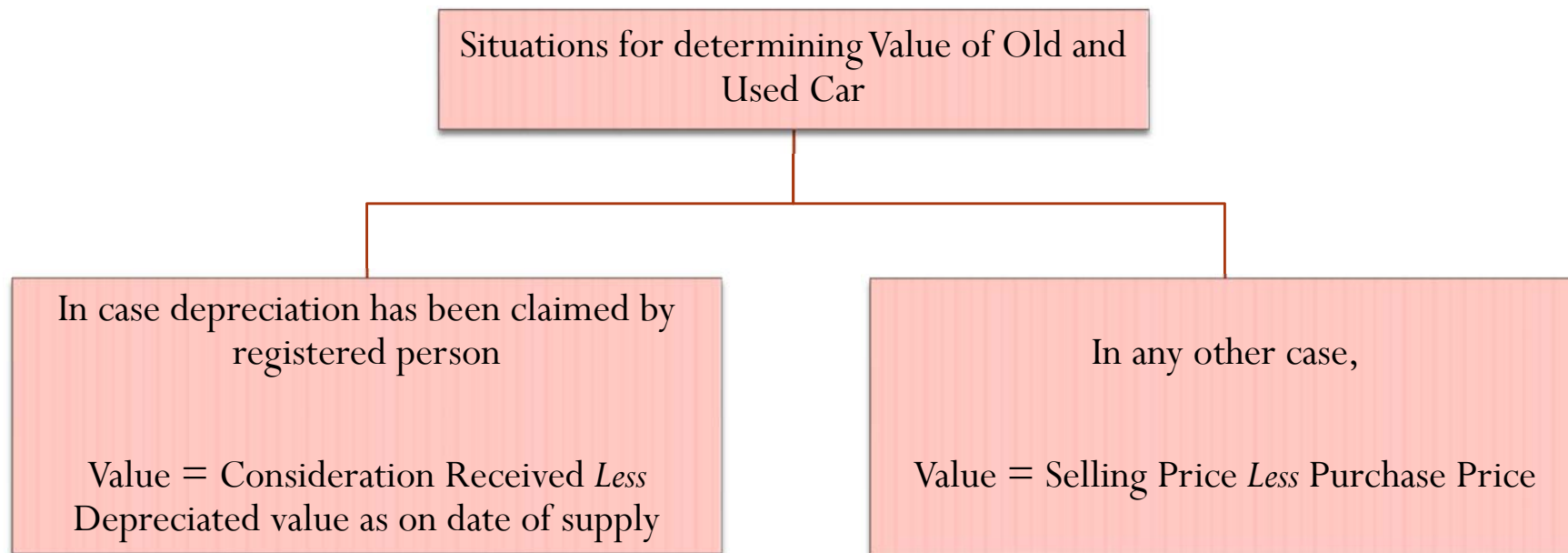
□ (notification. 8- CTR date 25 Jan 2018) with (notification. 1- CCR date 25 Jan 2018)

Sr. No.	Chapter Heading	Description of Goods	Old Rate	New Rate
1	8703	Old and used, petrol Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven motor vehicles of engine capacity of 1200 cc or more and of length of 4000 mm or more	28% + CC	18% + NIL CC
2	8703	Old and used, diesel driven motor vehicles of engine capacity of 1500 cc or more and of length of 4000 mm	28% + CC	18% + NIL CC
3	8703	Old and used motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles.	28% + CC	9% + NIL CC
4	87	All Old and used Vehicles other than those mentioned from S. No. 1 to S.No.3	28% + CC	12% + NIL CC

□ Condition has been provided that above amended rates shall not apply if the supplier has availed ITC under CGST Act 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or ITC of Value Added Tax or any other taxes paid, on such goods

# Change in Rate of sale of old motor cars

- Explanation has been provided prescribing value of the sale of old and used motor car:



- Note : Where value is negative, value to be ignored.

- Example:

- Say, in case of depreciated old and used Car sold for a consideration of Rs. 1,00,00 and WDV as on date of supply is 80,000 Value for levying GST shall be 20,000 (1,00,000 – 80,000).

- Say, if any other case, old and used Car sold for Rs. 1,00,00 and purchase price of the same is 80,000 Value for levying GST shall be 20,000 (1,00,000 – 80,000)

# Time of supply for construction against transfer of development right

*(notification. 4- CTR date 25 Jan 2018)*

Notification defining the Time of supply for construction of Transfer of Development Right

- a) A registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
- b) registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,

as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause(a) above and in the form of development rights referred to in clause(b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter)

## Effect of the above notification

- It appears that there is deferment of liability of GST from the date of supply of development right

# Input Service Distributor

*(notification. 3- CT date 23 Jan 2018)*

- ❑ Notification 3/2018 – CT prescribed sub rule 54 (1A) details which an Invoice or, as the case may be, a credit or debit note issued for transfer the credit of common input services to the Input Service Distributor:
- ❑ Above is in addition to sub-rule 54 (1) which prescribed details required on invoice or, as the case may be, an Input Service Distributor credit note issued by an Input Service Distributor for transfer of credit

# Input Service Distributor

- ❑ Insertion of New Rule 54(1A) after Rule 54(1) for ISD distribution of common ITC

	Rule 54 (1)	Rule 54 (1A)
A	name, address and GSTIN of Input Service Distributor;	name, address and GSTIN of registered person having same PAN and same State code as Input Service Distributor;
B	a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as- “-”, “/” respectively, and any combination thereof, unique for a financial year;	a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as- “-”, “/” respectively, and any combination thereof, unique for a financial year;
C	date of its issue;	date of its issue;
D	name, address and GSTIN of recipient to whom the credit is distributed;	name, address and GSTIN of Input Service Distributor;

# Input Service Distributor

	Rule 54 (1)	Rule 54 (1A)
F	signature or digital signature of the Input Service Distributor or his authorised representative:	signature or digital signature of the registered person or his authorised representative:
G	-----	GSTIN of supplier of common service and original invoice number whose credit is sought to be transferred to the Input Service Distributor;

## ❑ Issues:

- Whether two separate working is required for transfer of ITC by ISD' or and will lead to increase in compliance?
- Whether this will lead to separate invoicing requirement and formatting?
- What about ISD distributed from July 2017 to 23 January 2018?

# E-way Bill

## Generation of EWB

*(notification. 3- CT date 23 Jan 2018)*

- ❑ Rules provided vide Notification 27/2017 – CT Dated 30 August 2017;
- ❑ Applicable vide Notification 74/2017 – CT dated 29 December 2017;
- ❑ Postponed vide Notification 11/2018 – Central Tax dated 02 February 2018;
- ❑ EWB needs to be generated before movement of goods;
- ❑ Section 138 of Central Goods and Service Tax Rules, 2017 provides for cases wherein E-way Bill (EWB) is not applicable. One such situation provided in 138 (14) (c) is as under:  
“(c) where the goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;”
- ❑ Issue:
  - Whether exemption is only available From port To ICD and not to and fro?



# E-way Bill

- ❑ Issue 3: Relevance of GST INV - 01? No specific form made available on GST portal / EWB portal.
- ❑ Issue 4: Generation of EWB in case of Bills for Bill to – Ship to sales
- ❑ Issue 5: Generation of EWB in case of Sale of goods in the course of Import / High Seas Sales

# E-way Bill

## Validity of EWB:

- ❑ Validity is calculated from the date and time of generation of e-way bill as stated below:

No.	Distance	Validity of EWB
1.	Up to 100 Kms	One Day from the relevant date
2.	For every additional 100 Kms or part thereof thereafter	Additional One Day from the relevant date

- ❑ In the first Proviso to Sub Rule (10) of Rule 138, it is stated that "the Commissioner may, by notification, extend the validity period of E-Way Bill for certain categories of goods as may be specified therein".
- ❑ In the second Proviso to Sub Rule (10) of Rule 138, it is stated that "where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of the E-Way Bill, the transporter may generate another E-Way Bill after updating the details in Part B of Form GST EWB-01".

# E-way Bill

## Validity of EWB:

### ❑ Issues:

- Why the flexibility of extending the E-Way Bill given in First Proviso to Sub Rule (10) of Rule 138 is only given to certain categories of goods and not provided to all goods?
- In case if E-Way Bill validity can be extended without changing vehicle, then what is the need of updating Part B of GST EWB-01?

# E-way Bill

## Deemed Acceptance of E-Way Bill

- ❑ Sub Rule (11) of Rule 138 of GST Rules, the details of E-Way Bill will be made available to the Supplier or the Recipient, as the case may be, on the common portal where he can accept or reject the same.
- ❑ Further, Sub Rule (12) of Rule 138 supplier/recipient has to accept the E-Way Bill within 72 hours or it will deemed to be accepted after this period.
- ❑ Further, Sub Rule (8) of Rule 138 of GST Rules mentions that a supplier may utilise the details of Part A of Form GST EWB-01 for furnishing the details in Form GSTR-1.

# E-way Bill

## Deemed Acceptance of E-Way Bill

### ❑ Issues:

- If Government wants to link the E-Way Bill information with the GSTR-1 then what is the need of introducing deemed acceptance in GST Law?
- Will this clause not lead to increase in compliance? Is this not an additional burden on the dealers to keep checking every day whether somebody has wrongly used their GST number or not?

# E-way Bill

## Consolidated E-Way Bill (CEWB)

- ❑ CWEB is a document containing multiple e-way bills for multiple consignments being carried in one conveyance (goods vehicle). That is, the transporter, carrying multiple consignments of various consignors and consignees in one vehicle wherein he is required to carry one CEWB instead of carrying multiple e-way bills for those consignments.
  
- ❑ CEWB is like a trip sheet and it contains details of different EWBs which are moving towards one direction, and these EWBs will have different validity periods.
  
- ❑ Hence, CEWB is not having any independent validity. However, individual consignment specified in corresponding EWB in the CEWB should reach destination as per its validity period of that individual EWB.
  
- ❑ Issue:
  - Considering the present amendment whether is it feasible for a transporter to track validity of individual EWB?

# List of Key Recent Changes in GST

## □ Central Tax

Sr. No.	Notification Reference	Subject	Comment
1	01/2018-Central Tax, dt. 01-01-2018	Amended effective rate of tax under composition scheme for manufacturers & other suppliers	Manufacturer - 0.5% of T/o Other Suppliers - 0.5% of taxable T/o of goods
2	02/2018-Central Tax, dt. 20-01-2018	Extend date of filing <b>FORM GSTR-3B</b> for Dec - 2017 till 22 January 2018	Extension of two days from original date of 20 January 2018
3	03/2018-Central Tax, dt. 23-01-2018	First Amendment 2018 to CGST Rules	ISD, Amended EWB Rules,
4	04/2018-Central Tax, dt. 23-01-2018	Reduction of late fee in case of delayed filing of <b>FORM GSTR-1</b> – Outward Supplies	In case of Liability – reduced to 50 NIL return – reduced to 20
5	05/2018-Central Tax, dt. 23-01-2018	Reduction of late fee in case of delayed filing of <b>FORM GSTR-5</b> – Non resident taxable person	
6	06/2018-Central Tax, dt. 23-01-2018	Reduction of late fee in case of delayed filing of <b>FORM GSTR-5A</b> – OIDAR Service Provider	

# List of Key Recent Changes in GST

## □ Central Tax

Sr. No.	Notification Reference	Subject	Comment
7	07/2018-Central Tax, dt. 23-01-2018	Reduction of late fee in case of delayed filing of FORM GSTR-6 – Input Service Distributor	Reduced to 50
8	08/2018-Central Tax, dt. 23-01-2018	Extension of date for filing the return in FORM GSTR-6	For months of July 2017 to February 2018 till 31 March 2018
9	09/2018-Central Tax, dt. 23-01-2018	Amendment of notification No. 4/2017-Central Tax dated 19 June 2017 for notifying e-way bill website	Notified <a href="http://www.ewaybill.nic.in">www.ewaybill.nic.in</a> as E-waybill Portal
10	10/2018-Central Tax, dt. 23-01-2018	Amending notification No. 39/2017-Central Tax dated 13 October 2017 for cross-empowerment of State tax officers for processing and grant of refund	State authorities given power to process and grant refunds
11	11/2018-Central Tax, dt. 02-02-2018	To postpone the coming into force of the e-way bill rules	Further date to be notified



# List of Key Recent Changes in GST

## ❑ Central Tax (Rate) – “CTR”

Sr. No.	Notification Reference	Subject	Comment
12	01/2018-CTR, dt. 25-01-2018	Amended rates of various services	Construction Related Service, E-commerce Related Service, Services by way of admission to specific amusement parks, event, etc.
13	02/2018-CTR, dt. 25-01-2018	Exempt certain services from GST	Transportation of goods by air /vessel, reinsurance of insurance schemes, providing information under RTI Act, etc.
14	03/2018-CTR, dt. 25-01-2018	Insertion of New exemption under RCM for services supplied by Government by way of renting of immovable property to a registered person	Tax to be paid by any registered person under GST Act

# List of Key Recent Changes in GST

## ❑ Central Tax (Rate) – “CTR”

Sr. No.	Notification Reference	Subject	Comment
15	04/2018-CTR, dt. 25-01-2018	Determining time of supply with respect to payment of tax by registered person supplying service by way of construction against transfer of development right and vice versa.	Date of entering into conveyance deed or similar instrument (say allotment letter)
16	05/2018-CTR, dt. 25-01-2018	To exempt Central Government's share of Profit Petroleum from Central tax	Exempting services of grant of license or lease to explore or mine petroleum crude or natural gas
17	09/2018-CTR, dt. 25-01-2018	To amend Notification No.45/2017-Central (Rate)	Substitution of name of “Department of Scientific Research” with “Department of Scientific and Industrial Research”

# List of Key Recent Changes in GST

## ❑ Integrated Tax (Rate) – “ITR”

Sr. No.	Notification Reference	Subject	Comment
18	06/2018-ITR, dt. 25-01-2018	Exempting royalty and license fee from Integrated tax to the extent it is paid on the consideration attributable to royalty and license fee included in transaction value under Rule 10(1)(c) of Customs Valuation (Determination of value of imported Goods) Rules, 2007	Exempting value of Royalty and license included in transaction value under Rule 10(1)(c) of Customs Valuation so as to avoid double taxation on the same transaction

## ❑ Compensation Cess (Rate) – “CCR”

Sr. No.	Notification Reference	Subject	Comment
19	01/2018-CCR, dt. 25-01-2018	To amend Notification No.1/2017-Compensation Cess (Rate).	Exempting all old and used motor vehicles from CCR – only if ITC / CENVAT / VAT not taken





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