

# **PAPER 4B: INDIRECT TAXES**

## **STATUTORY UPDATE FOR NOVEMBER 2022 EXAMINATION**

*For the sake of brevity, Central Goods and Services Tax, Integrated Goods and Services Tax, Central Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017, Central Goods and Services Tax Rules, 2017 and Integrated Goods and Services Tax Rules, 2017 have been referred to as CGST, IGST, CGST Act, IGST Act, CGST Rules and IGST Rules respectively.*

*Unless otherwise specified, the section numbers and rules referred to in the chapters of Part I: Goods and Services Tax pertain to CGST Act and CGST Rules respectively*

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The provisions of the CGST Act, 2017 and the IGST Act, 2017 as amended by the Finance Act, 2021, including significant notifications and circulars issued and other legislative amendments made, up to 30th April, 2022, are applicable for November 2022 examination.

The subject matter of August 2021 Edition of the Study Material of Intermediate Paper 4B: Indirect Taxes is based on the provisions of the CGST Act and the IGST Act as amended upto 30.04.2021.

**The amendments made by the notifications and circulars issued between 01.05.2021 and 31.10.2021 in GST laws as well as the amendments made by the Finance Act, 2021 which became effective between 01.05.2021 and 31.10.2021, are given in this Statutory Update.**

For the ease of reference, the amendments have been grouped into Chapters which correspond with the Chapters of the Study Material.

# SUPPLY UNDER GST



## 1. **Activities/ transactions involving supply between any person, other than an individual, and its members/constituents for consideration included in scope of supply [Section 7 and Schedule II]**

Following amendments have been made by the Finance Act, 2021:

- (i) Earlier, supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration, was treated as supply of goods. [Para 7 of Schedule II to the CGST Act]. The said para has been omitted from Schedule II **retrospectively with effect from 01.07.2017.**
- (ii) A new clause (aa) has been inserted in sub-section (1) of section 7 to include the following activity/transaction within the scope of supply **retrospectively with effect from 01.07.2017:**

Activities or transactions, by a person, other than an individual, to its members or constituents or *vice-versa*, for cash, deferred payment or other valuable consideration.

The above amendment puts an end to the ambiguity whether activities or transactions involving supply of goods or services, by any person, other than an individual, to its members or *vice-versa* fall within the purview of supply or not. The amendment brings the certainty that said activities or transactions are covered within the scope of supply under

GST and ensures the leviability of GST on such activities or transactions. Further, an explanation is also being inserted to section 7(1)(aa), to clarify that the person/ its members/ constituents shall be deemed to be two separate persons and the supply of activities/ transactions *inter se* shall be deemed to take place from one person to another. This explanation prevents the use of doctrine of mutuality by such person(s) to avoid GST liability<sup>1</sup>.

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<sup>1</sup> *The above amendment, in effect, overrules the judgment of the Hon'ble Supreme Court in State of West Bengal v. Calcutta Club Limited wherein it was held that the transactions between a Club and its members cannot be taxed owing to the doctrine of mutuality, i.e., a person cannot make a profit from himself.*

# CHARGE OF GST



## 1. Manufacturers of fly ash bricks/blocks, building bricks, bricks of fossil, earthen/roofing tiles, etc. ineligible to opt for composition levy

As per section 10(2)(e) read with *Notification No. 14/2019 CT dated 07.03.2019*, a manufacturer of following goods cannot opt for composition scheme:

Tariff item, sub-heading, heading or Chapter	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan Masala
24	All goods i.e. Tobacco and manufactured tobacco substitutes
2202 1010	Aerated water

**With effect from 01.04.2022**, *Notification No. 14/2019 CT dated 07.03.2019* has been amended to include following items in the above list:

Tariff item, sub-heading, heading or Chapter	Description of goods
6815	Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks
6901 00 10	Bricks of fossil meals or similar siliceous earths
6904 10 00	Building bricks
6905 10 00	Earthen or roofing tiles

***[Notification No. 04/2022 CT dated 31.03.2022]***

# EXEMPTIONS FROM GST



## 1. Amendments in the list of services exempted from GST

Notification no. 12/2017 CT(R) dated 28.06.2017 provides list of services exempted from CGST. With effect from 01.10.2021, the said list of exempted services has been amended as follows:-

### (i) Amendment in the existing exemptions

Below mentioned entries of exemption from GST have been amended. Amendments have been highlighted in bold/by strike through, hereunder:

Sl. No.	Description of services
3	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority <b>or a Governmental authority or a Government Entity</b> by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution
3A	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central

	<p>Government, State Government or Union territory or local authority <b>or a Governmental authority or a Government Entity</b> by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution</p>
<p><b>15</b></p>	<p>Transport of passengers, with or without accompanied belongings, by –</p> <p>(a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;</p> <p>(b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or</p> <p>(c) stage carriage other than air-conditioned stage carriage</p> <p><b>However, nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator (ECO), and notified under section 9(5) of the CGST, 2017.</b> Services referred herein are the service by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, omnibus or any other motor vehicle, the tax on supplies of which shall be paid by the ECO if such services are supplied through ECO.</p>
<p><b>17</b></p>	<p>Service of transportation of passengers, with or without accompanied belongings, by—</p> <p>(a) railways in a class other than— (i) first class; or (ii) an air-conditioned coach;</p> <p>(b) metro, monorail or tramway;</p> <p>(c) inland waterways;</p> <p>(d) public transport, other than predominantly for tourism</p>

	<p>purpose, in a vessel between places located in India; and</p> <p>(e) metered cabs or auto rickshaws (including e-rickshaws)</p> <p><b>However, nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator (ECO), and notified under section 9(5) of the CGST, 2017.</b></p> <p>Services referred herein are the service by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, omnibus or any other motor vehicle, the tax on supplies of which shall be paid by the ECO if such services are supplied through ECO.</p>
<b>72</b>	<p>Services provided to the Central Government, State Government, Union territory administration under any training programme for which <b>75% or more of the</b> total expenditure is borne by the Central Government, State Government, Union territory administration</p>

**(ii) New exemptions introduced**

Following new services have been exempted from CGST:

<b>Sl. No.</b>	<b>Description of services</b>
<b>61A</b>	Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States

**(iii) Withdrawal of existing exemption**

Exemption from CGST available to following services has been withdrawn:

<b>Sl. No.</b>	<b>Description of services</b>
<b>43</b>	Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways



Parallel exemptions from IGST have been extended to supply of inter-State services by amending *Notification No. 9/2017 IT(R) dated 28.06.2017*, which grants exemption to supply of inter-State services from IGST.

***[Notification No. 07/2021 CT(R) dated 30.09.2021, Notification No. 16/2021 CT(R) dated 18.11.2021, Notification No. 16/2021 IT(R) dated 18.11.2021 and Notification No. 07/2021 IT(R) dated 30.09.2021]***

# INPUT TAX CREDIT



1. **ITC can be availed only by the recipients only if the suppliers have uploaded the relevant invoices/debit notes in their GSTR-1/ IFF and communicated the same to the recipients in GSTR 2B [Section 16(2) amended and rule 36(4)]**

**With effect from 01.01.2022**, a new clause (aa) has been added to section 16(2) by the Finance Act, 2021 to stipulate following new condition for availment of ITC that input tax credit in respect of any supply of goods or services or both is available to a registered person only if **the details of the invoice/debit note in respect of said supply has been furnished by the supplier in the statement of outward supplies (GSTR-1) and such details have been communicated to the recipient of such invoice/debit note in the manner specified under section 37.**

Consequently, rule 36(4) has been substituted to give effect to aforesaid amendment. Substituted rule 36(4) reads as follows:

No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under section 37(1) unless,-

- (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in Form GSTR-1 or using the invoice furnishing facility (IFF); and

- (b) the details of such invoices or debit notes have been communicated to the registered person in Form GSTR-2B under rule 60(7).

Thus, ITC can now be taken only for those invoices whose details are reflected in GSTR-2B i.e the respective suppliers (vendors) have filed the details of such invoices their GSTR-1. Earlier, ITC, in respect of invoices/debit notes not uploaded by the suppliers in their GSTR-1s/IFF, could be availed upto 5% of the eligible credit available in respect of invoices/debit notes the details of which had been furnished by the suppliers in their GSTR-1s/using IFF.

***[Notification No. 40/2021 CT dated 29.12.2021]***

# REGISTRATION



## 1. Aadhaar authentication mandatory for registered person [New rule 10B]

Lately Aadhaar authentication has been made mandatory for the new registrants as well as for the existing registrants. Section 25(6A) stipulates that every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in the prescribed manner, form and time<sup>2</sup>. Rule 10A prescribes the manner in which aadhaar authentication needs to be done.

The registered person, who has been issued a certificate of registration under GST, shall undergo authentication of the Aadhaar number of:-

- Proprietor, in the case of proprietorship firm,
- Any partner, in the case of a partnership firm,
- Karta, in the case of a Hindu undivided family,
- Managing director or any whole-time director, in the case of a company,
- Any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the
- Trustee in the Board of Trustees, in the case of a Trust;

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<sup>2</sup> Section 25(6A)

and of the Authorized Signatory,

in order to be eligible for the following purposes:

- for filing of application for revocation of cancellation of registration
- for filing of refund application in Form RFD-01
- for refund of the IGST paid on goods exported out of India

Consequential amendments by virtue of insertion of rule 10B have been made in rule 23(1) (revocation of cancellation of registration), in rule 89(1) (application for refund of tax, interest, penalty, fees or any other amount), and in rule 96(1) (refund of integrated tax paid on goods or services exported out of India).

First proviso to section 25(6A) provides that if an Aadhaar number is not assigned to an existing registered person, such person shall be offered alternate and viable means of identification in the prescribed manner. Such manner has been prescribed by rule 10A as follows:

If Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –

- (a) her/his Aadhaar Enrolment ID slip; and
- (b) (i) Bank passbook with photograph; or
  - (ii) Voter identity card issued by the Election Commission of India; or
  - (iii) Passport; or
  - (iv) Driving license issued by the Licensing Authority

Such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.

The afore-said rule 10B shall not be applicable to persons notified under section 25(6D) of the CGST Act i.e. to persons exempt from aadhaar authentication.

The consequential amendments in the abovementioned rules would mean that in order prior to filing an application for:

- revocation of cancellation of registration;

- refund application under rule 89
- refund application under rule 96

**[Notification No. 35/2021 dated 24.09.2021 & Notification No. 38/2021 CT dated 21.12.2021]**

**[Effective from 01.01.2022]**

- 2. Enhanced threshold limit of ₹ 40 lakh for registration available to persons exclusively engaged in making supplies of goods will not be available to suppliers of fly ash bricks/blocks, building bricks, bricks of fossil, earthen/roofing tiles, etc.**

Notification No. 10/2019 CT dated 07.03.2019 exempts any person who is engaged exclusively in supply of goods and whose aggregate turnover in a financial year does not exceed ₹ 40 lakh, from obtaining the registration.

One of the exceptions to this exemption is that the persons engaged in making supplies of ice cream and other edible ice, whether or not containing cocoa [2105 00 00], Pan masala [2106 90 20] and all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes.

**With effect from 01.04.2022**, persons engaged in making supplies of following goods will also not be eligible to avail benefit of said exemption from registration:

<b>Sr. No.</b>	<b>Tariff item, sub-heading, heading or Chapter</b>	<b>Description of goods</b>
<b>4</b>	6815	Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks
<b>5</b>	6901 00 10	Bricks of fossil meals or similar siliceous earths
<b>6</b>	6904 10 00	Building bricks
<b>7</b>	6905 10 00	Earthen or roofing tiles

**[Notification No. 03/2022 CT dated 31.03.2022]**

**3. Extension of time-limit for filing application for revocation of cancellation of registration by a registered person permitted beyond the stipulated time**

**With effect from 01.01.2021**, proviso to section 30(1) was substituted to permit the extension of time-limit for filing application for revocation of cancellation of registration by a registered person. Accordingly, the time period of filing of application for revocation of 30 days from the date of service of the order of cancellation of registration, may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,—

- (a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding 30 days;
- (b) by the Commissioner, for a further period not exceeding 30 days, beyond the period specified in clause (a).

Consequently, rule 23(1) has also been suitably amended to give effect to aforesaid amendment. Amended rule 23(1) reads as follows:

A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in prescribed form, to such proper officer, within a period of 30 days from the date of the service of the order of cancellation of registration **or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to section 30(1)**, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

***[Notification No. 15/2021 CT dated 18.05.2021]***

# TAX INVOICE, CREDIT AND DEBIT NOTES E-WAY BILL



**1. E-invoicing mandatory for all registered businesses with aggregate turnover in any preceding financial year from 2017-18 onwards greater than ₹ 20 crore**

All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹ 500 crore were required to mandatorily issue e-invoices for all B2B invoices with effect from 1<sup>st</sup> October, 2020. Since then, the threshold limit for issuing the e-invoices has been progressively reduced.

**With effect from 01.04.2022**, such limit has been further reduced to ₹ 20 crore. Thus, e-invoicing has been made mandatory for all registered businesses with an aggregate turnover in any preceding financial year from 2017-18 onwards greater than ₹ 20 crore.

***[Notification No. 01/2022 CT dated 24.02.2022]***

**2. E-invoicing not applicable to a Government Department and a local authority**

E-invoicing is mandatory for persons notified vide *Notification No. 13/2020 CT dated 21.03.2020* as amended. As per said notification, all registered businesses with an aggregate turnover in any preceding financial year from



2017-18 onwards greater than ₹ 50 crore are mandatorily required to issue e-invoices except:-

- ✓ Special Economic Zone units\*\*
- ✓ Insurer or banking company or financial institution including NBFC
- ✓ GTA supplying services in relation to transportation of goods by road in a goods carriage
- ✓ Supplier of passenger transportation service
- ✓ Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens

Said notification has been amended to exempt **a Government Department and a local authority** also from the mandatory requirement of e-invoicing.

***[Notification No. 23/2021 CT dated 01.06.2021]***

### **3. Clarification in respect of applicability of Dynamic Quick Response (QR)code**

All **B2C invoices** issued by a registered person whose **aggregate turnover** in any preceding financial year from 2017-18 onwards **exceeds ₹ 500 crores** are **mandatorily required to have a Dynamic QR code** from December 1, 2020 vide *Notification No. 14/2020 CT dated 21.03.2020*.

In this regard, ***Circular no. 156/12/2021 GST dated 21.06.2021*** and ***Circular No. 165/21/2021 GST dated 17.11.2021*** have clarified that:

1. Dynamic QR Code is required to be provided on an invoice, issued to a person, who has obtained a UIN. Any person, who has obtained a Unique Identity Number (UIN), is not a "registered person" as per the definition of registered person provided in section 2(94). Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.
2. In cases, where an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of the IGST Act, and the payment is received by the supplier, in convertible FOREX or in Indian Rupees wherever permitted

by the RBI (such supply of services is not considered as export of services as per the IGST Act), such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

#### **4. E-way bill generation facility to be blocked only in respect of outward movement of goods, by the defaulting registered person [Rule 138E]**

Rule 138E contains provisions pertaining to blocking of e-way bill generation facility, i.e. disabling the generation of e-way bill.

Earlier, a user was not able to generate e-way bill for a GSTIN if the said GSTIN was not eligible for e-way bill generation in terms of rule 138E. It implies that the GSTINs of such blocked taxpayers could not be used to generate the e-way bills neither as supplier (consignor) nor as recipient (consignee).

Said rule has been amended to relax such restriction. Blocking of GSTIN for e-way bill generation would only be for the defaulting supplier GSTIN and not for the defaulting Recipient or Transporter GSTIN. Suspended GSTIN cannot generate e-way bill as supplier. However, the suspended GSTIN can get the e-way bill generated as recipient or as transporter.

In other words, e-way bill generation facility is blocked only in respect of any outward movement of goods of the registered person who is not eligible for e-way bill generation as per rule 138E. E-way bills can be generated in respect of inward supplies of said registered person.



Mr. A, a registered person paying tax under regular scheme in Delhi, has not filed Form GSTR-1 for last 2 months. Mr. B, Haryana, (a regular return filer) wants to generate an e-way bill for goods to be supplied to Mr. A. As per earlier position of law, Mr. B would not have been able to generate e-way bill with Mr. A's GSTIN.

In terms of the amended position of law, there will be no more restriction in generating e-way Bill as Mr. B who is making outward movement of goods is a regular return filer.

Mr. A wants to generate an e-way bill in respect of an outward supply of goods to Mr. H. E-way bill generation is blocked in this case as it's an outward movement of goods of Mr. A who has not filed GSTR-1 for past 2 months.

***[Notification No. 15/2021 CT dated 18.05.2021]***

# PAYMENT OF TAX



## 1. Guidelines for disallowing debit of electronic credit ledger under rule 86A

CBIC vide has issued guidelines for disallowing debit of an amount from electronic credit ledger under rule 86A. Rule 86A provides that in certain specified circumstances, Commissioner or an officer authorised by him, on the basis of **reasonable belief** that ITC available in the electronic credit ledger has been fraudulently availed or is ineligible, may not allow debit of an amount equivalent to such credit in electronic credit ledger.

On perusal of Rule 86A, it is evident that Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must have "reasons to believe" that ITC available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger of the said registered person under rule 86A.

### Grounds for disallowing debit of an amount from electronic credit ledger

The reasons for such belief must be based on one or more following grounds:

- ❑ The credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.
- ❑ The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.

- ❑ The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.
- ❑ The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration
- ❑ The credit is availed by the registered person without having any invoice or debit note or any other valid document for it

***[CBEC-20/16/05/2021 GST/1552 dated 02/11/2021]***

# RETURNS



## 1. Maximum late fees payable under section 47 for delayed filing of Forms GSTR-1, GSTR-3B and GSTR-4, rationalized

Section 47 of the CGST Act stipulates a specified amount of late fee for delay in filing any of the following by their respective due dates:

- (A) Statement of Outward Supplies [Section 37]
- (B) Returns (including returns under QRMP Scheme) Returns [Section 39]
- (C) Final Return [Section 45]

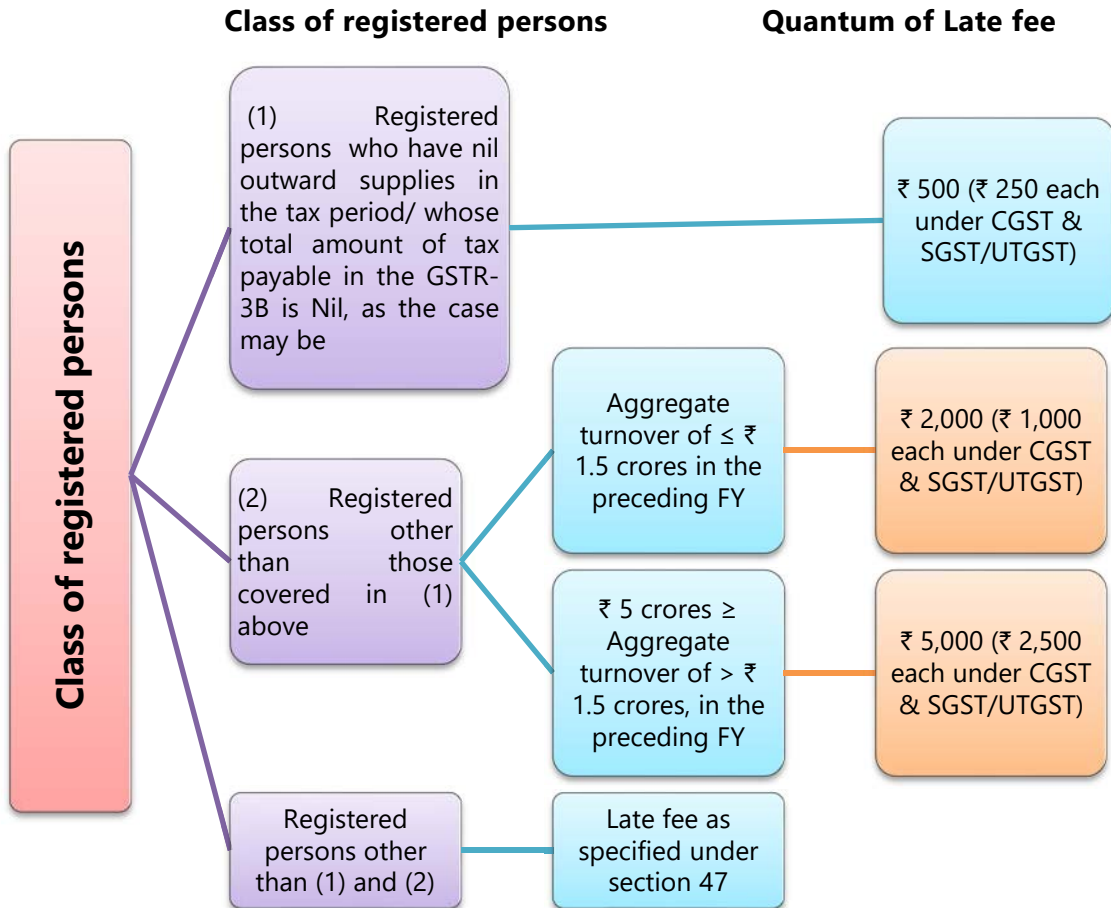
An equal amount of late fee is payable by such person under the respective SGST/UTGST Act as well.

The late fee can be waived off partially or fully by the Central Government. Consequently, since the inception of GST law, late fee is being regularly waived off by the Central Government either partially or fully.

From the tax period June, 2021 onwards or quarter ending June, 2021 or FY 2020-21 onwards, as the case may be, late fee for delayed filing of Forms GSTR-1, GSTR-3B and GSTR-4, has been rationalized as follows:

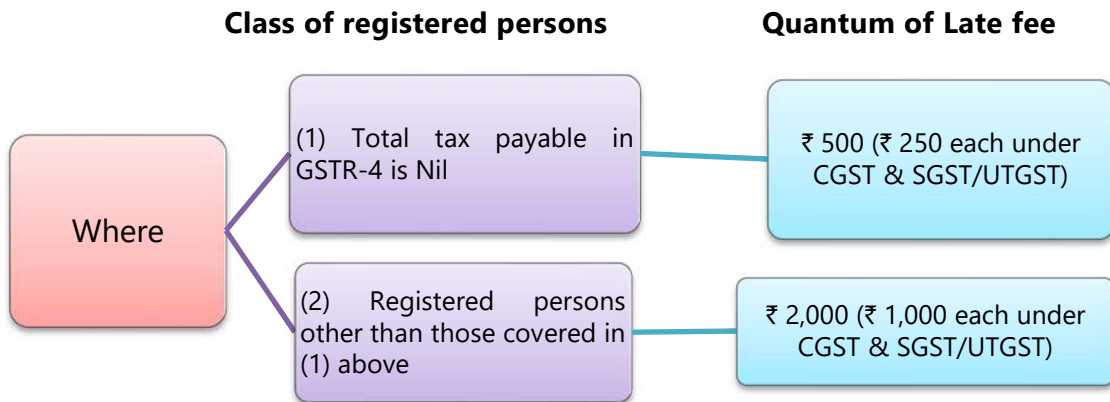
**For delayed filing of GSTR-1 and/or GSTR-3B:-**

Total amount of late fee payable under section 47 of the CGST Act **from June, 2021 / quarter ending June, 2021 onwards**, by the registered person who fail to furnish Form GSTR-1 and/or Form GSTR-3B by the due date, shall be as follows:



**For delayed filing of GSTR-4:-**

Total amount of late fee payable under section 47 of the CGST Act **from F.Y. 2021-22 onwards**, by the registered person (composition taxpayer) who fail to furnish Form GSTR-4 by the due date, shall be as follows:



**[Notification Nos 19-22/2021 CT all dated 01.06.2021]**

**2. Mandatory requirement of submitting reconciliation statement audited by specified professional, done away with [Section 44 substituted]**

**With effect from 01.08.2021**, section 44 of the CGST Act, 2017 has been substituted by the Finance Act, 2021 so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self-certification basis. It further provides for the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.

Substituted section 44 reads as follows:

Every registered person, other than an input service distributor, a person paying tax under section 51 or section 52<sup>3</sup>, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed.

However, the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section.

<sup>3</sup> Provisions of section 51 and 52 have been discussed in detail at final level.

Further, nothing contained section 44 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.