

PAPER 4B: INDIRECT TAXES

STATUTORY UPDATE FOR MAY, 2020

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.

For Paper 4B: Indirect Taxes, the provisions of CGST Act, 2017 and IGST Act, 2017, including significant circulars and notifications issued and other legislative amendments made upto 31st October, 2019, are applicable for May, 2020 examinations.

August, 2019 Edition of the Study Material for Paper 4B of Intermediate (New Course) is based on the provisions of the CGST Act and IGST Act as amended upto 30.04.2019. It may be noted that August, 2019 Edition of the Study Material for Paper 4B of Intermediate (New Course) is applicable for Paper 4B of Intermediate Integrated Professional Competence Course also.

The amendments made by the notifications and circulars issued between 01.05.2019 and 31.10.2019 in GST laws 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. Service by way of grant of alcoholic liquor licence is neither a supply of goods nor a supply of service

In terms of section 7(2) of the CGST Act, the Government has notified the following activity or transaction undertaken by the State Governments in which they are engaged as public authorities, to be treated neither as a supply of goods nor a supply of service, namely:-

“Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called.”

[Notification No. 25/2019 CT (R) dated 30.09.2019/ Notification No. 24/2019 IT (R) dated 30.09.2019]

Circular No. 121/40/2019 GST dated 11.10.2019 has clarified that the above special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Tax is required to be paid by the business entities on such services under reverse charge.

2. Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors

Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor’s act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (*quid pro quo*) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

Some examples of cases where there would be no taxable supply are as follows:-

- (i) “Good wishes from Mr. Rajesh” printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.
- (ii) “Donated by Smt. Malati Devi in the memory of her father” written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus, where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement, GST is not leviable.

[Circular No. 116/35/2019 GST dated 11.10.2019]

CHARGE OF GST

1. Manufacturer of aerated water & supplier of aerated water cannot opt to pay tax under composition levy and *Notification No. 2/2019 CT (R) dated 07.03.2019* respectively

As per section 10(2)(e) of CGST Act 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

Further, as per *Notification No. 2/2019 CT (R) dated 07.03.2019*, a registered person making supplies of the above goods is also not eligible to pay concessional tax under the said notification.

With effect from 01.10.2019, *Notification No. 14/2019 CT dated 07.03.2019* and *Notification No. 2/2019 CT (R) dated 07.03.2019* have been amended to include aerated water (Tariff item 2202 1010) in the above list of negative goods.

Thus, now a manufacturer of aerated water (Tariff item 2202 1010) will also not be eligible to opt for composition scheme. Likewise, a supplier of aerated water (Tariff item 2202 1010) will also not be eligible to pay concessional tax under *Notification No. 2/2019 CT (R) dated 07.03.2019*.

[Notification No. 43/2019 CT dated 30.09.2019 & Notification No. 18/2019 CT (R) dated 30.09.2019]

2. Amendments in reverse charge notifications

With effect from 01.10.2019, the reverse charge notifications for services i.e., *Notification No. 13/2017 CT(R) dated 28.06.2017/ Notification No. 10/2017 IT (R) dated 28.06.2017* have been amended by *Notification No. 22/2019 CT (R) dated 30.09.2019/ Notification No. 21/2019 IT (R) dated 30.09.2019* as under:

(a) Payment of tax under reverse charge made optional in case of supply of services by an author by way of transfer/permitting the use or enjoyment of a copyright relating to original literary work to a publisher

Earlier, tax on supply of services by an **author**, music composer, photographer, artist by way of transfer or permitting the use or enjoyment of a copyright relating to original literary, dramatic, musical or artistic works, was payable under reverse charge by publisher, music company, producer. This entry has been substituted as under-

Sl. No.	Category of supply of services	Supplier service	of	Recipient of service

9	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory
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Simultaneously, a new entry has been inserted for transfer of copyright by an author to publisher. The new entry reads as under-

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher	Author	Publisher located in the taxable territory

However, an author can choose to pay tax under forward charge if-

- (i) he has taken registration under the CGST Act and filed a declaration, in the prescribed form, that he exercises the option to pay CGST on the said service under forward charge in accordance with section 9(1) of the CGST Act and to comply with all the provisions as they apply to a person liable for paying the tax in relation to the supply of any goods and/or services and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;
- (ii) he makes a declaration on the invoice issued by him in prescribed form to the publisher.

(b) New services under reverse charge mechanism

Sl. No.	Category of supply of services	Supplier of service	Recipient of service
15	Services provided by way of renting of a motor vehicle provided to a body corporate	Any person other than a body corporate, who is paying CGST @ 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory
16	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India, as amended	Lender i.e., a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI

EXEMPTIONS FROM GST

1. Amendments relating to exemptions to supply of specified services

Notification No. 12/2017 CT (R) dated 28.06.2017 (hereinafter referred to as “**exemption notification**”) which grants exemption from CGST to intra-State supply of specified services, has been amended vide Notification No. 13/2019 CT (R) dated 31.07.2019 and Notification No. 21/2019 CT (R) dated 30.9.2019, as under-

Entry amended/ omitted/ newly inserted	Description of services (Prior to amendment)	Description of services (Post amendment)	Remarks, if any
Entry 7 amended	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to Rs. 20 lakh [Rs. 10 lakh in case of a Special Category States (hereinafter referred to as SCS)] in the preceding FY.	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017.	Exemption available under these entries to a business entity is restricted provided said business entity is not eligible for registration in the preceding FY. Accordingly, the threshold limit provided under these entries was aligned with the threshold limit for registration provided earlier [viz. Rs. 20 lakh (Rs. 10 lakh in case of SCS)].
Entry 45 amended	Services provided by- (a) an arbitral tribunal to – (i) or (ii) a business entity with an aggregate turnover up to Rs. 20 lakh (Rs. 10 lakh in the case of SCS) in the preceding FY; (iii)	Services provided by- (a) an arbitral tribunal to – (i) or (ii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017; (iii)	Consequent to amendment in the threshold limit for registration prescribed for different States/UTs (including SCS), said entries have also been amended suitably so as to provide exemption to a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act.

	<p>(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-</p> <p>(i)</p> <p>(ii)</p> <p>(iii) a business entity with an aggregate turnover up to Rs. 20 lakh (Rs. 10 lakh in the case of SCS) in the preceding FY;</p> <p>(iv)</p> <p>(c) a senior advocate by way of legal services to-</p> <p>(i)</p> <p>(ii) a business entity with an aggregate turnover up to Rs. 20 lakh (Rs. 10 lakh in the case of SCS) in the preceding FY.</p> <p>(iii)</p>	<p>(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-</p> <p>(i)</p> <p>(ii)</p> <p>(iii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;</p> <p>(iv)</p> <p>(c) a senior advocate by way of legal services to-</p> <p>(i)</p> <p>(ii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017.</p> <p>(iii)</p>	
New Entry 9AA	NA	Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be	Since FIFA U-17 Women's World Cup 2020 is to be hosted in India, exemption has been granted to services provided by and to FIFA and its subsidiaries related any of the events under this World Cup.

		<p>hosted in India.</p> <p><u>Condition to be fulfilled:</u> Director (Sports), Ministry of Youth Affairs and Sports have to certify that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020.</p>	
Entry 14 amended	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation below Rs. 1,000 per day or equivalent.	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation below or equal to Rs. 1,000 per day or equivalent.	Earlier, accommodation services were exempt only where value of supply per unit per day was less than Rs. 1,000/-, i.e., such services were taxable where value of supply per unit per day was Rs. 1,000/- or more. However, now, exemption has also been extended in a case where value of supply per unit per day is Rs. 1,000/- i.e., such services are taxable only where value of supply per unit per day exceeds Rs. 1,000/-.
Entry 19A amended	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India upto 30.09.2019.	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India upto 30.09.2020.	The exemption which was earlier available upto 30.09.2019 has now been extended upto 30.09.2020.
Entry 19B amended	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India upto 30.09.2019.	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India upto 30.09.2020.	
Entry 22 amended	Services by way of giving on hire – (a) to a state transport undertaking (STU), a motor vehicle meant to carry more than	Services by way of giving on hire – (a) to a state transport undertaking (STU), a motor vehicle meant to carry more than 12	With a view to encourage the extensive usage of environment friendly electric vehicles, GST exemption has been extended to hiring of electric buses by the local

	12 passengers; or (b) (c)	passengers; or (aa) to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers; <u>EOV</u> means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to such road vehicle. (b) (c)	authorities.
New Entry 24B	NA	Services by way of storage/ warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.	
New Entry 29B	NA	Services of life insurance provided/agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.	
Entry 35 amended	Entry 35 exempts services of general insurance business	A new clause '(r)' has been inserted: (r) Bangla Shasya Bima	Service of general insurance business provided under Bangla Shasya Bima

	provided under specified schemes. Hitherto, 17 schemes were provided in this entry under clauses (a) to (q).		scheme have been exempted.
New Entry 82A		Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020.	Since FIFA U-17 Women's World Cup 2020 is to be hosted in India, admission to events organized under it.

Parallel exemptions from IGST have been extended to supply of specified inter-State services by amending Notification No. 9/2017 IT (R) dated 28.06.2017 vide Notification No. 13/2019 IT (R) dated 31.07.2019/ Notification No. 20/2019 IT (R) dated 30.09.2019.

2. Clarification regarding applicability of GST on delayed payment charges in case of late payment of Equated Monthly Instalments (EMI)¹

Issue: Whether GST is applicable on additional / penal interest on the overdue loan? Whether such penal interest would be exempt under Entry 27 of exemption notification or it would be taxable treating it as consideration for liquidated damages²?

Clarification: As per the provisions of section 15(2)(d) of the CGST Act, the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. Entry 27 of exemption notification, *inter alia*, exempts the services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services). Here, interest means interest payable in any manner in respect of any moneys borrowed/debt incurred (including a deposit, claim or other similar right or obligation), but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.

There are two transaction options involving EMI that are prevalent in the trade. In view of the provisions of law discussed in preceding para, these two options, alongwith the GST applicability on them, have been explained with the help of illustrations as under -

Illustration – 1: X sells a mobile phone to Y. The cost of mobile phone is Rs. 40,000/-. However, X gives Y an option to pay in installments, Rs. 11,000/- every month before 10th day of the following month, over next four months (Rs. 11,000/- × 4 = Rs. 44,000/-). As per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to Rs. 500/- per month for the delay.

In some instances, X is charging Y Rs. 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/ penal interest amounting to Rs. 500/- per month for each delay in payment.

¹ An EMI is a fixed amount paid by a borrower to a lender at a specified date every calendar month. EMIs are used to pay off both interest and principal every month, so that over a specified period, the loan is fully paid off along with interest. In cases where the EMI is not paid at the scheduled time, there is a levy of additional / penal interest on account of delay in payment of EMI.

² It implies that it would amount to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the CGST Act, 2017 i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act".

In this case, the amount of penal interest is to be included in the value of supply [in terms of section 15(2)(d)]. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

Illustration – 2: X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/ penal interest @ 1.25% per month for any delay in payment.

Here, the additional/ penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under exemption Entry 27. Consequently, in this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. would not be subject to GST as the same would be covered under said exemption entry. However, any service fee/ charge or any other charges, if any, are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in exemption notification, and accordingly will not be exempt.

Moreover, the value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST.

It is further clarified that the transaction of levy of additional/ penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act as this levy of additional/ penal interest satisfies the definition of "interest" as contained in exemption notification [elaborated above].

[Circular No. 102/21/2019-GST dated 28.06.2019]

3. Clarification on issues related to GST on monthly subscription/ contribution charged by a Residential Welfare Association from its members

Issue	Clarification		
Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?	Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7,500/- per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.		
A RWA has aggregate turnover of Rs. 20 lakh or less in a FY. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?	No. If aggregate turnover of an RWA does not exceed Rs.20 Lakh in a FY, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7,500/- per month per member. RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7,500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs. 20 lakh or more.		
	Annual turnover of RWA	Monthly maintenance charge	Whether exempt?
	More than Rs. 20 lakhs	More than Rs. 7,500/-	No
		Rs. 7,500/- or less	Yes
	Rs. 20 lakhs or less	More than Rs.	Yes

		7,500/-	
		Rs. 7,500/- or less	Yes
Is the RWA entitled to take ITC of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?	RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fittings etc.) and input services such as repair and maintenance services.		
Where a person owns 2 or more flats in the housing society/residential complex, whether the ceiling of Rs. 7,500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?	As per general business sense, a person who owns 2 or more residential apartments in a housing society/residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7,500/- per month per member shall be applied separately for each residential apartment owned by him. For example, if a person owns 2 residential apartments in a residential complex and pays Rs. 15,000/- per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7,500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.		

[Circular No. 109/28/2019 GST dated 22.07.2019]

4. Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India

Under Entry 66 of the exemption notification, services provided by educational institutions to its students, faculty and staff are exempt only when such institution falls under the definition of educational institution provided under the exemption notification. Educational institution has been defined to mean, *inter alia*, an institution providing services by way of education as a part of a curriculum for obtaining a qualification/degree recognized by law.

In this regard, it has been clarified that Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. Therefore, Maritime Training Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST subject to fulfilment of other conditions specified under entry 66 of the exemption notification³.

[Circular No. 117/36/2019 GST dated 11.10.2019]

5. Clarification on the effective date of insertion of explanation in notification

Section 11(3) of CGST Act provides that the Government may insert an explanation in any notification issued under section 11, for the purpose of clarifying its scope or applicability, at any time within 1 year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.

It is hereby clarified that the explanation having been inserted under section 11(3) of the CGST Act, is effective from the inception of the entry in notification and not from the date from which the notification (that inserted said explanation) becomes effective.

³ This clarification applies, *mutatis mutandis*, to corresponding entries of respective IGST, UTGST, SGST exemption notifications.

For example, the principal *Notification No. 11/2017 CT (R) dated 28.06.2017* came into force with effect from 1.07.2017. Thereafter, a new entry - Entry no. 3(vi) is inserted w.e.f. 21.09.2017. Subsequently, an explanation is also inserted with respect to entry no. 3(vi) on 26.07.2018. Although the effective date mentioned in the notification which inserted said explanation is 27.07.2018, said explanation will be effective from the inception of entry in notification i.e. 21.09.2017 and not 27.07.2018.

[Circular No. 120/39/2019 GST dated 11.10.2019]

6

INPUT TAX CREDIT

1. Restriction on availment of input tax credit (ITC) in respect of invoices/debit notes not uploaded by the suppliers in their GSTR-1s [New sub-rule (4) inserted in rule 36 of the CGST Rules]

Section 16(2) of the CGST Act provides certain conditions for availing ITC wherein one of the conditions is that the taxpayer must be in possession of the tax invoice or other tax paying document in respect of which he is claiming the ITC. Rule 36 of CGST Rules lays down the documents and other conditions basis which the registered person can claim ITC.

With effect from 09.10.2019, a new sub-rule (4) has been introduced in rule 36 to specify the quantum of ITC that can be claimed against the invoices/debit notes uploaded and invoices/debit notes not uploaded, by the supplier. As per sub-rule (4) of rule 36, ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in GSTR-1, cannot exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers in GSTR-1.

This can be further understood as under-

Case	Amount of ITC to be claimed by recipient
Where invoice/debit note has been uploaded by the supplier in his GSTR-1	Full ITC, if all other conditions of availing ITC are fulfilled
Where invoice/debit note has not been uploaded by supplier in his GSTR-1	20% of the eligible ITC available in respect of the uploaded invoices/debit notes. However, the ITC so claimed should not exceed the actual eligible ITC available in respect of the invoices not uploaded.

[Notification No. 49/2019 CT dated 09.10.2019]

Illustration 1

Mr. Vijay, a registered supplier, receives 100 invoices (for inward supply of goods/ services) involving GST of Rs. 10 lakh, from various suppliers during the month of October 20XX.

Compute the ITC that can be claimed by Mr. Vijay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX in the following independent cases assuming that GST of Rs. 10 lakh is otherwise eligible for ITC:

Case I

Out of 100 invoices, 80 invoices involving GST of Rs. 6 lakh have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor.

Case II

Out of 100 invoices, 75 invoices involving GST of Rs. 8.5 lakh have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor.

Answer

As per sub-rule (4) of rule 36, ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in GSTR-1, cannot exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers in GSTR-1.

Case I

ITC to be claimed by Mr. Vijay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX will be computed as under-

Invoices	Amount of ITC involved in the invoices (Rs.)	Amount of ITC that can be availed (Rs.)
In respect of 80 invoices uploaded in GSTR-1	6 lakh	6 lakh [Refer Note 1 below]
In respect of 20 invoices not uploaded in GSTR-1	4 lakh	Rs. 1.2 lakh [Refer Note 2 below]
Total	10 lakh	7.2 lakh

Notes:

- (1) In respect of invoices uploaded by the suppliers in their GSTR-1, full ITC can be availed.
- (2) The ITC in respect of invoices not uploaded has to be restricted to 20% of eligible ITC in respect of invoices uploaded in GSTR-1. Thus, in respect of 20 invoices not uploaded in GSTR-1s, the ITC has been restricted to Rs. 1.2 lakh [20% of Rs. 6 lakh].

Case II

ITC to be claimed by Mr. Vijay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX will be computed as under-

Invoices	Amount of ITC involved in the invoices (Rs.)	Amount of ITC that can be availed (Rs.)
In respect of 75 invoices uploaded in GSTR-1	8.5 lakh	8.5 lakh [Refer Note 1 below]
In respect of 25 invoices not uploaded in GSTR-1	1.5 lakh	Rs. 1.5 lakh [Refer Note 2 below]
Total	10 lakh	10 lakh

Notes:

- (1) In respect of invoices uploaded by the suppliers in their GSTR-1, full ITC can be availed.
- (2) The ITC in respect of invoices not uploaded has to be restricted to 20% of eligible ITC in respect of invoices uploaded in GSTR-1. However, since in this case, the actual ITC [Rs. 1.5 lakh] in respect of 25 invoices not uploaded in GSTR-1 does not exceed 20% of the eligible ITC in respect of invoices uploaded in GSTR-1s [Rs. 1.7 lakh (20% of Rs. 8.5 lakh)], actual amount of ITC can be availed.

REGISTRATION

1. Bank Account details may be furnished after obtaining registration certificate [New rule 10A inserted and rule 21 of the CGST Rules amended]

While applying for registration on GST portal, a person is required to furnish the details of his bank account. This requirement has now been relaxed to a limited extent, by inserting a new rule 10A to the CGST Rules. In pursuance to the same, the registered person is allowed to furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision, soon after obtaining certificate of registration and a GSTIN, but not later than 45 days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier.

This relaxation is not available for those who have been granted registration as TDS deductor/ TCS collector under rule 12⁴ or who have obtained *suo-motu* registration under rule 16.

In other words, a registered person has an option to give his bank account details after obtaining registration, within 45 days from the date of grant of registration or the due date of furnishing return, whichever is earlier.

However, if a person violates the provisions of rule 10A, his GST registration is liable to be cancelled [Rule 21].

[Notification No. 31/2019 CT dated 28.06.2019]

2. Meaning of not making taxable supply during suspension of registration clarified. Registered person required to issue revised tax invoice and file first return for supplies during suspension period [Rule 21A of the CGST Rules]

Rule 21A provides that once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, his registration shall remain suspended during pendency of the proceedings relating to cancellation of registration filed. Such person **shall not make any taxable supply** during the period of suspension and shall not be required to file any return [Rule 21A(3)].

An explanation has been inserted to this sub-rule (3) to rule 21A clarifying that the expression **“shall not make any taxable supply”** shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.

Further, a new sub-rule (5) has been inserted in said rule to provide that where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) [revised tax invoices] and section 40 [first return] in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

[Notification No. 49/2019 CT dated 09.10.2019]

⁴ Provisions relating to TDS and TCS have been discussed in detail at Final level.

TAX INVOICE, CREDIT AND DEBIT NOTES

1. Special provisions pertaining to tax invoice for services by way of admission to exhibition of cinematograph films in multiplex screens [Rule 46 and 54 of the CGST Rules]

A registered person has an option to issue consolidated tax invoice for supplies at the close of each day where the value of goods or services supplies is less than Rs. 200; recipient is unregistered and does not require tax invoice [in terms of section 31(3)(b) of the CGST Act read with fourth proviso to rule 46 of the CGST Rules]. With effect from 01.09.2019, fourth proviso to rule 46 has been amended to disallow this option to a supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens.

Further, with effect from 01.09.2019, a new sub-rule (4A) has been inserted in rule 54⁵. Accordingly, a registered person who is supplying services by way of admission to exhibition of cinematograph films in multiplex screens shall be required to issue an electronic ticket. The said electronic ticket is deemed to be a tax invoice, even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46.

Moreover, supplier of such services in a screen other than multiplex screens also has been given an option to follow above procedure.

[Notification No. 33/2019 CT dated 18.07.2019]

⁵ Rule 54 provides for issuance of tax invoice in special cases

ACCOUNTS AND RECORDS; E-WAY BILL

1. Validity of e-way bill in case of multimodal shipment in which at least one leg involves transport by ship [Rule 138(10) of the CGST Rules]

Rule 138(10) of CGST Rules provides validity period of e-way bill for over dimensional cargo and for cases other than over dimensional cargo. The sub-rule (10) of rule 138 has been amended to also provide the validity period of e-way bill for multimodal shipment in which at least one leg involves transport by ship.

Thus, amended sub- rule (10) lays down as under-

Sl. No.	Distance within country	Validity period from relevant date
1.	Upto 100 km	One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
2.	For every 100 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
3.	Upto 20 km	One day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

The sub-rule (10) has been further amended to lay down that the validity of the e-way bill can be extended within eight hours from the time of its expiry.

[Notification No. 31/2019 CT dated 28.06.2019]

1. Form GSTR-3B to be treated as a return furnished under section 39 of the CGST Act [Rule 61(5) of the CGST Rules]

Section 39(1) of the CGST Act prescribes a monthly return in Form GSTR-3 for every registered person, other than input service distributor, a non-resident taxable person, a composition taxpayer, person deducting tax at source, person collecting tax at source i.e., an electronic commerce operator and supplier of OIDAR services. However, filing of GSTR-3 has been deferred by the GST Council.

Rule 61(5) of CGST Rules provided that where the time limit for furnishing of details in Form GSTR-1 under section 37 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify the manner and conditions subject to which the return shall be furnished in Form GSTR-3B. The said rule has been amended retrospectively **with effect from 01.07.2017**, to specify that the return in Form GSTR-3B is the return under section 39(1) and that where a return in GSTR-3B is furnished by a person then such person shall not be required to furnish the return in Form GSTR-3.

[Notification No. 49/2019 CT dated 09.10.2019]

2. Filing of annual return under section 44(1) of the CGST Act for F.Y. 2017-18 and 2018-19 made optional for small taxpayers whose aggregate turnover is less than Rs 2 crores and who have not filed the said return before the due date

Filing of annual return (GSTR- 9) under section 44(1) of CGST Act read with rule 80(1) of CGST Rules, in respect of financial years 2017-18 and 2018-19, has been made voluntary for the registered persons whose turnover is less than Rs. 2 crore and who have not furnished the said annual return before the due date. The annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

[Notification No. 47/2019 CT dated 09.10.2019]