

Nucleus ADVISORS

RoundUp

September 2021 | F&A | Volume XIII



Welcome to our
monthly newsletter

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We bring you a concise and noteworthy regulatory developments in Income Tax, Goods & Services Tax and Companies Act during September 2021. We had tried to cover all important updates occurred during September 2021 in this volume of newsletter. The sole purpose of this circulation is to update finance professionals and business owners on direct & indirect taxes and other compliances. Feedbacks are welcome at info@nucleusadvisors.in.

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Why this Volume of Newsletter is important for reader?

Through the series of this newsletter, we aim at covering all relevant Income Tax, Goods & Service Tax, MCA, Audit & Assurance notification, circulars and case laws which may directly or indirectly impact our readers. At Nucleus, it is our utmost priority to help our readers to be informed with respect to the changes in relevant laws for a smoother compliance.



NEWSLETTER HIGHLIGHTS

Direct Tax Updates

- ✓ CBDT notifies Form 12BBA to be submitted by senior citizens wishing to claim benefit of Sec. 194P - Notification No. 99/2021.
- ✓ CBDT amends Income-tax Rules, 1962 to ease authentication of electronic records submitted in faceless assessment proceedings - Notification No. 101/2021.
- ✓ CBDT notifies Transfer from Air India limited to holding company will not be treated as transfer - Notification No. 104/2021.
- ✓ CBDT prescribes Income Tax Authority shall not be below the Rank of Income Tax Officer for Issuance of Notice for Inquiry before Assessment of Tax - Notification No. 109/2021.
- ✓ CBDT notifies Pension Fund 'Ontario Limited' to be eligible under Section 10(23FE) - Notification No.111/2021.
- ✓ CBDT notifies Pension Fund 'Ontario Limited' to be eligible under Section 10(23FE) - Notification No.112/2021.
- ✓ CBDT notifies that no TDS under Section 194A will be deducted by 'Scheduled Bank on payment of interest, other than interest on securities to Scheduled Tribe residing in any specified area - Notification No. 110/2021.
- ✓ CBDT further extends certain timelines to ease compliances - Notification No. 113/2021.

GST Updates

- ✓ Seeks to make amendments (Eighth Amendment, 2021) to the CGST Rules, 2017-Notification No. 35/2021 - Central Tax- dated Sept 24, 2021.
- ✓ Seeks to make amendments (Eighth Amendment, 2021) to the CGST Rules, 2017- Notification No. 36/2021 - Central Tax
- ✓ Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated August 29, 2021 - Reg.- Circular No. 158/14/2021-GST dated Sept 6, 2021.
- ✓ Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017-reg- Circular No. 161/14/2021-GST dated Sept 20, 2021.
- ✓ Clarification on doubts related to scope of "Intermediary"- Circular No. 159/14/2021-GST dated Sept 20, 2021.
- ✓ Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act-Reg- Circular No. 162/18/2021-GST dated Sept 25, 2021.
- ✓ Clarification in respect of certain GST related issues - reg- Circular No. 160/14/2021-GST dated Sept 20, 2021.
- ✓ On demand fetching of Bill of Entry details from ICEGATE Portal.
- ✓ Advisory for Taxpayers regarding Generation of EWB where the principal supply is Supply of services.
- ✓ Outcomes of 45th Meeting of the GST Council- dated September 17, 2021.

MCA Updates

- ✓ Extension of time for holding of Annual general Meeting for the Financial year ended on March 31, 2021.
- ✓ Extension of Last date of filing of Cost Audit Report.



DIRECT TAX UPDATES

CBDT notifies Form 12BBA to be submitted by senior citizens wishing to claim benefit of Sec. 194P - Notification No. 99/2021

The Central Board of Direct Taxes (CBDT) has notified a new rule that mandates senior citizens above 75 years to submit declaration in form 12BBA for claiming the benefit of not filing an income tax return (ITR) under section 194P.

A new Income Tax Rule 26D has been inserted after Rule 26C under Section 194P in the Income Tax Rules, 1962. The board has also amended form 16, form 24Q, form 26QC and form 26QD to incorporate necessary changes related to provisions of section 194P.

Accordingly, tax deduction at source (TDS) is deductible only for specified senior citizens above 75 years. These seniors need to submit a declaration of income in form 12BBA to the specified bank as notified by the Union government.

After receiving the declaration from the specified senior citizens, the specified bank will compute their total income after considering deductions available under section 80C to section 80U and rebate admissible under section 87A of the I-T Act. If needed, the bank will also deduct appropriate tax from the total income of these seniors.

Once the specified bank deducts tax under section 197P, the specified senior citizens are not required to file ITR since section 139 will not apply to them.

CBDT amends Income-tax Rules, 1962 to ease authentication of electronic records submitted in faceless assessment proceedings - Notification No. 101/2021

The Central Board of Direct Taxes (CBDT) has prescribed manner for authenticating electronic records under electronic verification code (EVC) as required by section 144B(7)(i)(b). It is provided it shall be deemed that the electronic record has been authenticated under electronic verification code if an assessee or any other person submits an electronic record by logging into his registered account in designated portal of the Income-tax Department.

CBDT notifies Transfer from Air India limited to holding company will not be treated as transfer - Notification No. 104/2021

The Central Government hereby notifies the transfer of capital asset under plan approved by Central Government from Air India Limited (PAN: AACCN6194P), being transferor public sector company, to Air India Assets Holding Limited (PAN: AAQCA4703M), being transferee public sector company, for the purposes of clause (vii) of the section 47 of the Income-tax Act, 1961

CBDT Prescribed Income Tax Authority shall not be below the Rank of Income Tax Officer for Issuance of Notice for Inquiry before Assessment of Tax - Notification No. 109/2021

Rule 12F is regarding prescribed income-tax authority under the second proviso to clause (i) of sub-section (1) of section 142 which reads, "The prescribed income-tax authority under the second proviso to clause (i) of sub-section (1) of section 142 shall be an income-tax authority not below the rank of Income-tax Officer who has been authorised by the Central Board of Direct Taxes to act as such authority for the purposes of that clause.

Section 142 of the Act provides for the conduct of inquiry before assessment. Clause (i) of sub section (1) of the said section gives the Assessing Officer the authority to issue notice to an assessee, who has not submitted a return of income, asking for submission of return. This is necessary to bring into the fold of taxation non-filers or stop filers who have transactions resulting in income. However, this power can be currently invoked only by the Assessing Officer.

CBDT notifies Pension Fund 'Ontario Limited' to be eligible under Section 10(23FE) - Notification No.111/2021

The Central Board of Direct Taxes (CBDT) notifies the pension fund '2452991 Ontario Inc.' as the specified person for the purposes of sub-clause (iv) of clause (c) of the Explanation 1 to Section 10(23FE) as the specified person in respect of the eligible investment made by it in India on or after September 16, 2021 but on or before the 31st day of March, 2024 subject to various conditions as specified in Notification. For various conditions please refer complete notification.

CBDT notifies Pension Fund 'Ontario Limited' to be eligible under Section 10(23FE) - Notification No.112/2021

The Central Board of Direct Taxes (CBDT) notifies the pension fund '276522 Ontario Limited' as the specified person for the purposes of sub-clause (iv) of clause (c) of the Explanation 1 to Section 10(23FE) as the specified person in respect of the eligible investment made by it in India on or after September 16, 2021 but on or before the 31st day of March, 2024 subject to various conditions as specified in Notification. For various conditions please refer complete notification.

CBDT notifies that no TDS under Section 194A TDS will be deducted by 'Scheduled Bank on payment of interest, other than interest on securities to Scheduled Tribe residing in any specified area - Notification No. 110/2021

The Central Government hereby notifies that no deduction of tax shall be made on the following payment under section 194A of the said Act, namely payment in the nature of interest, other than interest on securities, made by a scheduled bank located in a specified area, to a member of Scheduled Tribe residing in any specified area, as referred to in clause (26) of section 10 of the Income Tax Act 1961, subject to the following conditions

1. the payer satisfies itself that the receiver is a member of Scheduled Tribe residing in any specified area, and the payment as referred above is accruing or arising to the receiver as referred to in clause (26) of section 10 of the said Act, during the previous year relevant for the assessment year in which the payment is made, by obtaining necessary documentary evidences in support of the same
2. the payer reports the above payment in the statements of deduction of tax as referred to in sub-section (3) of section 200 of the said Act
3. the payment made or aggregate of payments made during the previous year does not exceed twenty lakh rupees.

CBDT further extends certain timelines to ease compliances - Notification No. 113/2021

The Central Government, in continuation of its commitment to address the hardship being faced by various stakeholder account of the Covid-19 pandemic, has, on consideration of representations received from various stakeholders, decided to

extend timelines for compliances under the Income-tax Act, 1961 (hereinafter referred to as “the Act”) in the following cases, as under:

1. Time limit for intimation of Aadhaar number to the Income tax Department for linking of PAN with Aadhaar has been extended from September 30,2021 to March 31,2022.
2. The due date for completion of penalty proceedings under the Act has also been extended from September 30,2021 to March 31,2022.

Further, the time limit for issuance of notice and passing of order by the Adjudicating Authority under the Prohibition of Benami Property Transactions Act, 1988 has also been extended to March 31,2022.

GST UPDATES

- **Seeks to make amendments (Eighth Amendment, 2021) to the CGST Rules, 2017-Notification No. 35/2021 - Central Tax- dated Sept 24, 2021**

The Central Board of Indirect Taxes and Customs (CBIC) released a notification with **No. 35/2021- Central Tax on Sept 24, 2021**. With this notification, the Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: –

- ✓ Short title and commencement-
 - ✓ These rules may be **called the CGST (Eighth Amendment) Rules, 2021**.
 - ✓ Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.
- ✓ In the CGST Rules, 2017, -
- ✓ In **rule 10A** of the said rules, with effect from the date as may be notified, -
 - a) after the words “details of bank account”, the words “which is in name of the registered person and obtained on Permanent Account Number of the registered person” shall be inserted;
 - b) the following proviso shall be inserted, namely: -

“Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.”
- ✓ **After rule 10A** of the said rules, with effect from the date as may be notified, the following rule shall be inserted, namely: -

“10B. Aadhaar authentication for registered person .–
The registered person, other than a person notified under sub-section (6D) of section 25, who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu undivided family, or of the Managing Director or any whole time Director, in the case of a company, or of 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 and of the authorized signatory, in order to be eligible for the purposes as specified in column (2) of the Table below:

S. No.	Purpose
1.	For filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23
2.	For filing of refund application in FORM RFD-01 under rule 89
3.	For refund under rule 96 of the integrated tax paid on goods exported out of India

Provided that 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: -

- ✓ her/his Aadhaar Enrolment ID slip; and
- ✓ i Bank passbook with photograph; or
 2. Voter identity card issued by the Election Commission of India; or
 3. Passport; or
 4. Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988);

Provided further that such person shall undergo the authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number.”;
- ✓ In rule 23 of the said rules, in sub-rule (1), with effect from the date as may be notified, after the words “on his own motion, may”, the words, figures and letter “, subject to the provisions of rule 10B,” shall be inserted;
- ✓ In rule 45 of the said rules, in sub-rule (3), with effect from the October 1, 2021, -
 - i. for the words “during a quarter”, the words “during a specified period” shall be substituted;
 - ii. for the words “the said quarter”, the words “the said period” shall be substituted;
 - iii. after the proviso, the following explanation shall be inserted, namely: -
“Explanation. - For the purposes of this sub-rule, the expression “specified period” shall mean. -

- a. the period of six consecutive months commencing on the April 1 and the October 1 in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and
 - b. a financial year in any other case.”;
5. In rule 59 of the said rules, in sub-rule (6), with effect from the January 1, 2022, -
 - a) in clause (a), for the words “for preceding two months”, the words “for the preceding month” shall be substituted; i.e., GSTR1 shall not be allowed to furnish if GSTR3B for preceding month is not filed
 - b) clause (c) shall be omitted; clause (c) was as follows:
~~a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period.]~~
6. In rule 89 of the said rules i.e., -
 - a) in sub-rule (1), with effect from the date as may be notified, after the words “may file”, the words “, subject to the provisions of rule 10B,” shall be inserted;
 Rule 89 (1) now reads as follows:
 Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file, **subject to the provisions of rule 10B**, an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:
 - b) after sub-rule (1), the following sub-rule shall be inserted, namely: -
 “(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:
 Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.”;
7. In rule 96 of the said rules, in sub-rule (1), after clause (b), with effect from the date as may be notified, the following clause shall be inserted, namely: -
 “(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;”;
8. After rule 96B of the said rules, with effect from the date as may be notified, the following rule shall be inserted, namely: -
 “96C. Bank Account for credit of refund. - For the purposes of sub-rule (3) of rule 91, sub-rule (4) of rule 92 and rule 94, “bank account” shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number:
 Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.”;

Seeks to make amendments (Eighth Amendment, 2021) to the CGST Rules, 2017- Notification No. 36/2021 - Central Tax

The Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 03/2021-Central Tax, dated the 23rd February, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 132(E), dated the February 23, 2021, namely:

In the said notification, in the first paragraph after the words “hereby notifies that the provisions of”, the words, brackets, figure and letter “sub-section (6A) or” shall be inserted.

Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated August 29, 2021 - Reg.- Circular No. 158/14/2021-GST dated Sept 6, 2021

The Government has issued detailed guidelines for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017 and rule 23 of the CGST Rules, 2017 have been specified, till the time an independent functionality for extension of time limit for applying in FORM GST REG-21 is developed on the GSTN portal.

Government has now issued **notification No. 34/2021-Central Tax dated August 29, 2021** (hereinafter referred to as "the said notification") under section 168A of the said Act to extend the timelines for filing of application for revocation of cancellation of registration to September 30, 2021, where the due date of filing of application for revocation of cancellation of registration falls between March 1, 2020 to August 31, 2021. This extension is applicable for those cases where registrations have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act.

In order to ensure uniformity in the implementation of the said notification across field formations, the Board, in exercise of its powers conferred by section 168(1) of the said Act, hereby clarifies the issues relating to the extension of timelines for application for revocation of cancellation of registration as under:

1. Applications covered under the scope of the said notification

The said notification specifies that where the due date of filing of application for revocation of cancellation of registration falls between March 1, 2020 to August 31, 2021, the time limit for filing of application for revocation of cancellation of registration is extended to September 30, 2021.

In other words, the date for filing application for revocation of cancellation of registration in all cases, where registration has been cancelled under clause (b) or clause (c) of section 29(2) of CGST Act, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between March 1, 2020 to August 31, 2021, is extended to September 30, 2021, irrespective of the status of such applications. As explained in this para, the said notification would be applicable in the following manner:

- i. **application for revocation of cancellation of registration has not been filed by the taxpayer-**
In such cases, the applications for revocation can be filed upto the extended timelines as provided vide the said notification. Such cases also cover those instances where an appeal was filed against order of cancellation of registration and the appeal had been rejected.
 - ii. **application for revocation of cancellation of registration has already been filed and which are pending with the proper officer-**
In such cases, the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.
 - iii. **application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection -**
In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.
 - iv. **application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority-**
In such cases, appellate authorities shall take the cognizance of the said notification for extension of timelines while deciding the appeal.
 - v. **application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer-**
In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.
2. It may be recalled that, w.e.f. Jan 1, 2021, proviso of section 30(1) of the CGST Act has been inserted which provides for extension of time for filing application for revocation of cancellation of registration by 30 days by Additional/ Joint Commissioner and by another 30 days by the Commissioner.
- Doubts have been raised whether the said notification has extended the due date in respect of initial period of 30 days for filing the application (in cases where registration has been cancelled under clause (b) or clause (c) of section 29(2) of CGST Act, 2017) under section 30(1) of the CGST Act or whether the due date of filing applications for revocation of registration can be extended further for the period of 60 days (30 + 30) by the Joint Commissioner/ Additional Commissioner/ Commissioner, as the case may be, beyond the extended date of Sept 30, 2021. It is clarified that:
- i. where the thirty days' time limit falls between March 1, 2020 to December 31, 2020, there is **no provision available to extend the said time period of 30 days** under section 30 of the CGST Act. For such cases, pursuant to the said notification, the time limit to apply for revocation of cancellation of registration stands extended up to September 30, 2021 only; and
 - ii. where the time period of thirty days since cancellation of registration has not lapsed as on January 1, 2021 or where the registration has been cancelled on or after January 1, 2021, the time limit for applying for revocation of cancellation of registration shall stand extended as follows:

- a. Where the time period of 90 days (initial 30 days and extension of 30 + 30 days) since cancellation of registration has elapsed by Aug 31, 2021, the time limit to apply for revocation of cancellation of registration stands extended upto September 30, 2021, without any further extension of time by Joint Commissioner/ Additional Commissioner/ Commissioner.
- b. Where the time period of 60 days (and not 90 days) since cancellation of registration has elapsed by Aug 31, 2021, the time limit to apply for revocation of cancellation of registration stands extended upto September 30, 2021, with the extension of timelines by another 30 days beyond Sept 30, 2021 by the Commissioner, on being satisfied, as per proviso to section 30(1) of the CGST Act.
- c. Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by Aug 31, 2021, the time limit to apply for revocation of cancellation of registration stands extended upto September 30, 2021, with the extension of timelines by another 30 days beyond Sept 30, 2021 by the Joint/ Additional Commissioner and another 30 days by the Commissioner, on being satisfied, as per proviso to section 30(1) of the CGST Act.

Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017-reg- Circular No. 161/14/2021-GST dated Sept 20, 2021

Various representations have been received citing ambiguity caused in interpretation of the Explanation 1 under section 8 of the IGST Act 2017 in relation to condition (v) of export of services as mentioned in sub-section (6) of the section 2 of the IGST Act 2017. Doubts have been raised whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of subsection (6) of section 2 of IGST Act.

2. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issue in succeeding paragraphs.

➤ **Relevant legal provisions:**

- 3.1 The export of services has been defined in sub-section (6) of the section 2 of the IGST Act 2017 as under:

(6) "export of services" means the supply of any service when, --

- i. the supplier of service is located in India;
- ii. the recipient of service is located outside India;
- iii. the place of supply of service is outside India;
- iv. the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- v. the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

- 3.2 Explanation 1 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under:

Explanation 1. --For the purposes of this Act, where a person has, --

- i. an establishment in India and any other establishment outside India;
- ii. an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- iii. an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

As per the above Explanation, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.

- 3.3 Reference is also invited to the Explanation 2 of Section 8 of IGST Act, which is reproduced below:

"Explanation 2. --A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory."

- 3.4 Reference is also invited to the definition of "person" as provided under CGST Act 2017, made applicable to IGST Act vide section 2(24) of IGST Act 2017. "Person" has been defined under sub-section (84) of the section 2 of the CGST Act 2017, as under:

(84) “person” includes—

- a) an individual;
- b) a Hindu Undivided Family;
- c) a company;
- d) a firm;
- e) a Limited Liability Partnership;
- f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
- h) any body corporate incorporated by or under the laws of a country outside India;
- i) a co-operative society registered under any law relating to co-operative societies;
- j) a local authority;
- k) Central Government or a State Government;
- l) society as defined under the Societies Registration Act, 1860;
- m) trust; and
- n) every artificial juridical person, not falling within any of the above;

3.5. The definitions of company and foreign company have been provided under section 2 of Companies Act 2013, as under:

(20) “company” means a company incorporated under this Act or under any previous company law;

(42) “foreign company” means any company or body corporate incorporated outside India which—

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

➤ **Analysis of the issue:**

4.1 Clause (v) of sub-section (6) of section 2 of IGST Act, which defines “export of services”, places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

4.2 Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.

4.3. In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as “export of services” in view of condition (v) of sub-section (6) of section 2 of IGST Act.

Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

4.4 From the perusal of the definition of “person” under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of “company” and “foreign company” under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate “person” under the provisions of CGST Act and accordingly, are separate legal entities. Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate “person” under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

➤ **Clarification:**

5.1 In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8”.

5.2 Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a ‘company’ in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017. Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as ‘export of services’, subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

Clarification on doubts related to scope of “Intermediary”- Circular No. 159/14/2021-GST dated Sept 20, 2021

Representations have been received citing ambiguity caused in interpretation of the scope of “Intermediary services” in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues in succeeding paragraphs.

1. Scope of Intermediary services

- i. ‘Intermediary’ has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST” Act) as under-

“Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”

- ii. The concept of ‘intermediary’ was borrowed in GST from the Service Tax Regime. The definition of ‘intermediary’ in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows:

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;”

- iii. From the perusal of the definition of “intermediary” under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

2. Primary Requirements for intermediary services

The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below:

- i. **Minimum of Three Parties:** By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.

ii. **Two distinct supplies:** As discussed above, there are two distinct supplies in case of provision of intermediary services;

- (1) Main supply, between the two principals, which can be a supply of goods or services or securities;
- (2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

iii. **Intermediary service provider to have the character of an agent, broker or any other similar person:**

The definition of “intermediary” itself provides that intermediary service provider means a broker, an agent or any other person, by whatever name called....”. This part of the definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

iv. **Does not include a person who supplies such goods or services or both or securities on his own account:**

The definition of intermediary services specifically mentions that intermediary “does not include a person who supplies such goods or services or both or securities on his own account”. Use of word “such” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.

v. **Sub-contracting for a service is not an intermediary service:**

An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, ‘A’ and ‘B’ have entered into a contract as per which ‘A’ needs to provide a service of, say, Annual Maintenance of tools and machinery to ‘B’. ‘A’ subcontracts a part or whole of it to ‘C’. Accordingly, ‘C’ provides the service of annual maintenance to ‘A’ as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of ‘A’, i.e., to ‘B’ on behalf of ‘A’. Though ‘C’ is dealing with the customer of ‘A’, but ‘C’ is providing main supply of Annual Maintenance Service to ‘A’ on his own account, i.e., on principal to principal basis. In this case, ‘A’ is providing supply of Annual Maintenance Service to ‘B’, whereas ‘C’ is supplying the same service to ‘A’. Thus, supply of service by ‘C’ in this case will not be considered as an intermediary.

vi. The specific provision of place of supply of ‘intermediary services’ under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

3. Applying the above mentioned guiding principles, the issue of intermediary services is clarified through the following illustrations:

A. Illustration 1

‘A’ is a manufacturer and supplier of a machine. ‘C’ helps ‘A’ in selling the machine by identifying client ‘B’ who wants to purchase this machine and helps in finalizing the contract of supply of machine by ‘A’ to ‘B’. ‘C’ charges ‘A’ for his services of locating ‘B’ and helping in finalizing the sale of machine between ‘A’ and ‘B’, for which ‘C’ invoices ‘A’ and is paid by ‘A’ for the same. While ‘A’ and ‘B’ are involved in the main supply of the machinery, ‘C’, is facilitating the supply of machine between ‘A’ and ‘B’. In this arrangement, ‘C’ is providing the ancillary supply of arranging or facilitating the ‘main supply’ of machinery between ‘A’ and ‘B’ and therefore, ‘C’ is an intermediary and is providing intermediary service to ‘A’.

B. Illustration 2

'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which "C" may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

C. Illustration 3

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

D. Illustration 4

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing/ processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, 'B' is not an intermediary.

4. The illustrations given in para 4 above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.

Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act-Reg - Circular No. 162/18/2021-GST dated Sept 25, 2021

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the CGST Act, 2017 and section 19(1) of the IGST Act, 2017. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder:

2.1 Section 77 of the CGST Act, 2017 reads as follows:

"77. Tax wrongfully collected and paid to Central Government or State Government. —

- 1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.
- 2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable." Section 19 of the IGST Act, 2017 reads as follows:
 - 3) "19. Tax wrongfully collected and paid to Central Government or State Government-
 - (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.
 - (2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable."

3. Interpretation of the term “subsequently held”

- 3.1 Doubts have been raised regarding the interpretation of the term “subsequently held” in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.
- 3.2 In this regard, it is clarified that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

4. The relevant date for claiming refund under section 77 of the CGST Act/ Section 19 of the IGST Act, 2017

- 4.1 Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) vide notification No. 35/2021-Central Tax dated Sept 24, 2021. The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:

“(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.”

- 4.2 The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e., from 24.09.2021.
- 4.3 Application of sub-rule (1A) of rule 89 read with section 77 of the CGST Act / section 19 of the IGST Act is explained through following illustrations.

A taxpayer “A” has issued the invoice dated 10.03.2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:

S. No	Scenario	Last date for filing the refund claim
1.	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on 10.05.2021.	Since "A" has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)
2.	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on 10.11.2021 i.e., after issuance of notification No. 35/2021-Central Tax dated 24.09.2021	Since "A" has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2023 (two years from the date of payment of tax under the correct head, i.e., integrated tax)
3.	Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10.05.2019	Since "A" has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)
4.	Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10.11.2022 i.e., after issuance of notification No. 35/2021-Central Tax dated 24.09.2021	Since "A" has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2024 (two years from the date of payment of tax under the correct head, i.e., integrated tax)

The examples above are only indicative one and not an exhaustive list. Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of notification No.35/2021-Central Tax, dated Sept 24, 2021, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.

4.4 Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

Clarification in respect of certain GST related issues - reg- Circular No. 160/14/2021-GST dated Sept 20, 2021

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues pertaining to GST laws. The issues have been examined. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies each of these issues as under:

S. No	Issue	Clarification
1.	Section 16 (4), as amended with effect from 01.01.2021, provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.	1. With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended vide the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.

	<p>Doubts have been raised seeking following clarification:</p> <p>1. Which of the following dates are relevant to determine the 'financial year' for the purpose of section 16(4):</p> <p style="padding-left: 40px;">(a) date of issuance of debit note, or (b) date of issuance of underlying invoice.</p> <p>2. Whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?</p>	<p>The amendment made is shown as below: <i>"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier."</i></p> <p>As can be seen, the words "invoice relating to such" were omitted w.e.f. 01.01.2021.</p> <p>2. The intent of law as specified in the Memorandum explaining the Finance Bill, 2020 states that "Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.</p> <p>3. Accordingly, it is clarified that:</p> <p style="padding-left: 20px;">a) w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.</p> <p style="padding-left: 20px;">b) The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.</p> <p>Illustration 1. A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020-21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.</p> <p>Illustration 2. A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.</p>
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2.	Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e., in cases of e-invoice).	<p>1. Rule 138A (1) of the CGST Rules, 2017 inter-alia, provides that the person in charge of a conveyance shall carry– (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.</p> <p>Further, rule 138A (2) of CGST Rules, after being amended vide notification No. 72/2020-Central Tax dated 30.09.2020, states that <i>“In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice”</i></p> <p>2. A conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever einvoice has been generated, the Quick Reference (QR) code, having an embedded Invoice Reference Number (IRN) in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice.</p> <p>3. Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.</p>
3.	Whether the first proviso to section 54(3) of CGST / SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty.	<p>1. The term ‘subjected to export duty’ used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.</p> <p>2. Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.</p>

Advisory for Taxpayers regarding Generation of EWB where the principal supply is Supply of services.

- Representations have been received from various trade bodies stating that they are not able to generate EWB bill for movement of those goods where their principle supply is classifiable as a service, since there is no provision for generating E-way Bill by entering SAC (Service Accounting Code-Chapter 99) alone on the E- way bill portal.
- To overcome this issue, the taxpayers are advised as below:
 - Rule 138 of CGST Rules, 2017, inter alia, states “Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees....” Thus, E way bill is required to be generated for the movement of Goods.
 - Therefore, in cases where the principal supply is purely a supply of service and involving no movement of goods, the e-way bill is not required to be generated.

- c) However, in cases where along with the principal supply of service, movement of some goods is also involved, e-way bill may be generated. Such situations may arise in cases of supply of services like printing services, works contract services, catering services, pandal or shamiana services, etc. In such cases, e-way bill may be generated by entering the details of HSN code of the goods, along with SAC (Service Accounting Code) of services involved.

On demand fetching of Bill of Entry details from ICEGATE Portal

- To help importers of goods, and recipients of supplies from SEZ, search Bill of Entry details, which did not auto-populate in GSTR-2A, a self-service functionality has been made available on the GST Portal that can be used to search such records in GST System, and fetch the missing records from ICEGATE.
- Please note that it usually takes 2 days (after reference date) for BE details to get updated on GST Portal from ICEGATE. This functionality should, therefore, be used if data is not available after this period.
Note: The reference date would be either Out of charge date, Duty payment date, or amendment date - whichever is later.
- Taxpayers can follow the below steps to fetch the requisite details:
 - Login to GST Portal
 - Navigate to **Services > User Services > Search BoE**



- c) Enter the Port Code, Bill of Entry Number, Bill of Entry Date and Reference Date and click the SEARCH button.
Note: The reference date would be either Out of charge date, Duty payment date, or amendment date - whichever is later.

 The screenshot shows the 'Search BoE Records' form on the GST Portal. The form is titled 'Search BoE Records' and has a sub-header 'Indicates Mandatory Fields *'. Below this, there's a section 'BoE Details *' with four input fields: 'Port Code *', 'Bill of Entry Number *', 'Bill of Entry Date *', and 'Reference Date *'. Each field has a corresponding input box. The 'Bill of Entry Date' and 'Reference Date' fields have a date picker icon. Below the input fields, there are three buttons: 'SEARCH', 'RESET', and 'HISTORY OF ICEGATE'. At the bottom, there's a note: 'Note : Data is normally received from ICEGATE to GST system within two days from the reference date. You are requested to use this facility only in case data is not available after such period'.

- d) If the BoE details do not appear in the Search results, click on the QUERY ICEGATE button, at the bottom of the screen, to trigger a query to ICEGATE.

- e) History of fetched BoE details from ICEGATE along with status of query are displayed after 30 minutes from the time of triggering the query.
4. **For records of type IMPG (Import of Goods), details of:** Period for Form GSTR-2A (system generated Statement of Inward Supplies); Reference Date; Bill of Entry Details like Port Code, BoE Number, BoE Date & Taxable Value; and Amount of Tax would be displayed.
- For records of type IMPGSEZ (Import of Goods from SEZ), details of:** Period for Form GSTR-2A; Reference Date; GSTIN of Supplier; Trade Name of Supplier; Bill of Entry Details like Port Code, BoE Number, BoE Date & Taxable Value; and Amount of Tax would be displayed.
5. Taxpayers are advised to confirm correct details either from BE documents, or using ICEGATE portal
6. For more details, click on:
https://tutorial.gst.gov.in/userguide/taxpayersdashboard/index.htm#t=Manual_boe.htm
7. In case of any problem, please create a ticket at the GST Helpdesk or GST Self-service portal by including following details:
- complete details of BE records
 - GSTIN
 - BE Number
 - BE Date
 - Port Code
 - Reference Number
 - Screenshot of ICEGATE portal with BE record
 - Any error that they may have encountered while using the “Search BoE” functionality on GST Portal

45th Meeting of the GST Council- dated September 17, 2021

The GST Council’s 45th meeting was held in Lucknow under the chairmanship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. The GST Council has inter-alia made the following recommendations relating to changes in GST rates on supply of goods and services and changes related to GST law and procedure:

I. Recommendations relating to GST rates on goods and services

A. COVID-19 relief measure in form of GST rate concessions

- Extension of existing concessional GST rates (currently valid till September 30, 2021) on following Covid-19 treatment drugs, up to December 31, 2021, namely Remdesivir, Tocilizumab etc.
- Reduction of GST rate to 5% on more Covid-19 treatment drugs, up to December 31, 2021, namely Itolizumab, Posaconazole, Infliximab, Favipiravir, Casirivimab & Imdevimab, 2-Deoxy-D-Glucose, Bamlanivimab & Etesevimab.

B. Major recommendations on GST rate changes in relation to Goods [w.e.f Oct 1, 2021 unless otherwise stated]

S.No.	Description	From	To
GST rate changes			
1.	Retro fitment kits for vehicles used by the disabled	Appl. rate	5%
2.	Fortified Rice Kernels for schemes like ICDS etc.	18%	5%
3.	Medicine Keytruda for treatment of cancer	12%	5%
4.	Biodiesel supplied to OMCs for blending with Diesel	12%	5%
5.	Ores and concentrates of metals such as iron, copper, aluminum, zinc and few others	5%	18%
6.	Specified Renewable Energy Devices and parts	5%	12%
7.	Cartons, boxes, bags, packing containers of paper etc.	12%/18%	18%
8.	Waste and scrap of polyurethanes and other plastics	5%	18%
9.	All kinds of pens	12%/18%	18%
10.	Railway parts, locomotives & other goods in Chapter 86	12%	18%
11.	Miscellaneous goods of paper like cards, catalogue, printed material (Chapter 49 of tariff	12%	18%
12.	IGST on import of medicines for personal use, namely i. Zolgensma for Spinal Muscular Atrophy ii. Viltepso for Duchenne Muscular Dystrophy iii. Other medicines used in treatment of muscular atrophy recommended by Ministry of Health and Family Welfare and Department of Pharmaceuticals.	12%	Nil
13.	IGST exemption on goods supplied at Indo-Bangladesh Border haats	Appl. rate	Nil
14.	Unintended waste generated during the production of fish meal except for Fish Oil	Nil (for the period July 1, 2017 to Sept 30,2019)	

C. Other changes relating to GST rates on goods

- Supply of mentha oil from unregistered person has been brought under reverse charge. Further, Council has also recommended that exports of Mentha oil should be allowed only against LUT and consequential refund of input tax credit.
- Brick kilns would be brought under special composition scheme with threshold limit of Rs. 20 lakhs, with effect from April 1, 2022. Bricks would attract GST at the rate of 6% without ITC under the scheme. GST rate of 12% with ITC would otherwise apply to bricks

D. Correction in Inverted Duty structure in Footwear and Textiles sector

GST rate changes in order to correct inverted duty structure, in footwear and textiles sector, as was discussed in earlier GST Council Meeting and was deferred for an appropriate time, will be implemented with effect from Jan 1,2022.

E. In terms of the recent directions of the Hon'ble High Court of Kerala, the issue of whether specified petroleum products should be brought within the ambit of GST was placed for consideration before the Council. After due deliberation, the Council was of the view that it is not appropriate to do so at this stage.

F. Major GST changes in relation to rates and scope of exemption on Services [w.e.f Oct 1, 2021 unless otherwise stated]

S.No	Description	From	To
1.	Validity of GST exemption on transport of goods by vessel and air from India to outside India is extended upto Sept 30, 2022.	-	Nil
2.	Services by way of grant of National Permit to goods carriages on payment of fee	18%	Nil
3.	Skill Training for which Government bears 75% or more of the expenditure [presently exemption applies only if Govt funds 100%].	18%	Nil
4.	Services related to AFC Women's Asia Cup 2022.	18%	Nil
5.	Licensing services/ the right to broadcast and show original films, sound recordings, Radio and Television programmes [to bring parity between distribution and licensing services]	12%	18%
6.	Printing and reproduction services of recorded media where content is supplied by the publisher (to bring it on parity with Colour printing of images from film or digital media)	12%	18%
7.	Exemption on leasing of rolling stock by IRFC to Indian Railways withdrawn.		
8.	E Commerce Operators are being made liable to pay tax on following services provided through them transport of passengers, by any type of motor vehicles through it [w.e.f. January 1, 2022] restaurant services provided through it with some exceptions [w.e.f. January 1, 2022]		
9.	Certain relaxations have been made in conditions relating to IGST exemption relating to import of goods on lease, where GST is paid on the lease amount, so as to allow this exemption even if (i) such goods are transferred to a new lessee in India upon expiry or termination of lease; and (ii) the lessor located in SEZ pays GST under forward charge.		

G. Clarification in relation to GST rate on Goods

- Pure henna powder and paste, having no additives, attract 5% GST rate under Chapter 14.
- Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues, falling under HS code 2303 attract GST at the rate of 5%.
- All laboratory reagents and other goods falling under heading 3822 attract GST at the rate of 12%.
- Scented sweet supari and flavored and coated illachi falling under heading 2106 attract GST at the rate of 18%
- Carbonated Fruit Beverages of Fruit Drink" and "Carbonated Beverages with Fruit Juice" attract GST rate of 28% and Cess of 12%. This is being prescribed specifically in the GST rate schedule.
- Tamarind seeds fall under heading 1209, and hitherto attracted nil rate irrespective of use. However, henceforth they would attract 5% GST rate (w.e.f. Oct 1, 2021) for use other than sowing. Seeds for sowing will continue at nil rate.
- External batteries sold along with UPS Systems/ Inverter attract GST rate applicable to batteries [28% for batteries other than lithium-ion battery] while UPS/inverter would attract 18%.
- GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, during the period from July 1, 2017 to Dec 31, 2018, in the same manner as has been prescribed for the period on or after January 1, 2019.
- Due to ambiguity in the applicable rate of GST on Fibre Drums, the supplies made at 12% GST in the past have been regularised. Henceforth, a uniform GST rate of 18% would apply to all paper and paper board containers, whether

10. Distinction between fresh and dried fruits and nuts is being clarified for application of GST rate of “nil” and 5%/12% respectively;
11. It is being clarified that all pharmaceutical goods falling under heading 3006 attract GST at the rate of 12% [not 18%].
12. Essentiality certificate issued by Directorate General of Hydrocarbons on imports would suffice; no need for taking a certificate every time on inter-state stock transfer.

H. Clarification in relation to GST rate on services

1. Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of ‘Scholarships for students with Disabilities’ is exempt from GST
2. Services by cloud kitchens/central kitchens are covered under ‘restaurant service’, and attract 5% GST [without ITC].
3. Ice cream parlor sells already manufactured ice- cream. Such supply of ice cream by parlors would attract GST at the rate of 18%.
4. Overloading charges at toll plaza are exempt from GST being akin to toll.
5. The renting of vehicle by State Transport Undertakings and Local Authorities is covered by expression ‘giving on hire’ for the purposes of GST exemption
6. The services by way of grant of mineral exploration and mining rights attracted GST rate of 18% w.e.f. July 01, 2017.
7. Admission to amusement parks having rides etc. attracts GST rate of 18%. The GST rate of 28% applies only to admission to such facilities that have casinos etc.
8. Alcoholic liquor for human consumption is not food and food products for the purpose of the entry prescribing 5% GST rate **on job work services in relation to food and food products.**

- II. On the issue of compensation scenario, a presentation was made to the Council wherein it was brought out that the revenue collections from Compensation Cess in the period beyond June 2022 till April 2026 would be exhausted in repayment of borrowings and debt servicing made to bridge the gap in 2020-21 and 2021-22. In this context various options, as have been recommended by various committees/ forums were presented. The Council deliberated at length on the issue. The Council decided to set up a GoM to examine the issue of correction of inverted duty structure for major sectors; rationalize the rates and review exemptions from the point of view of revenue augmentation, from GST. It was also decided to set up a GoM to discuss ways and means of using technology to further improve compliance including monitoring through improved e-way bill systems, e-invoices, FASTag data and strengthening the institutional mechanism for sharing of intelligence and coordinated enforcement actions by the Centre and the States.

III. Recommendations relating to GST law and procedure

A. Measures for Trade facilitation:

1. **Relaxation in the requirement of filing FORM GST ITC-04:**
Requirement of filing FORM GST ITC-04 under rule 45 (3) of the CGST Rules has been relaxed as under:
 - i. Taxpayers whose annual aggregate turnover in preceding financial year is above Rs. 5 crores shall furnish ITC-04 once in six months;
 - ii. Taxpayers whose annual aggregate turnover in preceding financial year is upto Rs. 5 crores shall furnish ITC-04 annually.
2. In the spirit of earlier Council decision that interest is to be charged only in respect of net cash liability, section 50 (3) of the CGST Act to be amended retrospectively, w.e.f. July 01, 2017, to provide that interest is to be paid by a taxpayer on “ineligible ITC availed and utilized” and not on “ineligible ITC availed”. It has also been decided that interest in such cases should be charged on ineligible ITC availed and utilized at 18% w.e.f. July 01, 2017.
3. Unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons (entities having same PAN but registered in different states), without going through the refund procedure, subject to certain safeguards.
4. Issuance of the following circulars in order to remove ambiguity and legal disputes on various issues, thus benefiting taxpayers at large:
 - a. **Clarification on scope of “intermediary services”;**

- b. **Clarification relating to interpretation of the term “merely establishment of distinct person” in condition (v) of the Section 2 (6) of the IGST Act 2017 for export of services.** A person incorporated in India under the Companies Act, 2013 and a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for considering a supply of service as export of services;
 - c. **Clarification in respect of certain GST related issues:**
 - i. W.e.f. Jan 01, 2021, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of CGST Act, 2017;
 - ii. There is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules, 2017;
 - iii. Only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) of CGST Act, 2017 from availment of refund of accumulated ITC.
5. **Provision to be incorporated in in CGST Rules, 2017 for removing ambiguity regarding procedure and time limit for filing refund of tax wrongfully paid as specified in section 77(1) of the CGST/SGST Act and section 19(1) of the IGST Act.**

J. Measures for streamlining compliances in GST

1. Aadhaar authentication of registration to be made mandatory for being eligible for filing refund claim and application for revocation of cancellation of registration.
2. Late fee for delayed filing of FORM GSTR-1 to be auto-populated and collected in next open return in FORM GSTR-3B.
3. Refund to be disbursed in the bank account, which is linked with same PAN on which registration has been obtained under GST.
4. Rule 59(6) of the CGST Rules to be amended with effect from Jan 01, 2022 to provide that a registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month.
5. Rule 36(4) of CGST Rules, 2017 to be amended, once the proposed clause (aa) of section 16(2) of CGST Act, 2017 is notified, to restrict availment of ITC in respect of invoices/ debit notes, to the extent the details of such invoices/ debit notes are furnished by the supplier in FORM GSTR-1/ IFF and are communicated to the registered person in FORM GSTR-2B.

K. GST Council has also recommended amendments in certain provisions of the Act and Rules.

Note: The recommendations of the GST Council have been presented in this release containing major item of decisions in simple language for information of all stakeholders. The same would be given effect through relevant Circulars/ Notifications/ Law amendments which alone shall have the force of law.



MCA UPDATES

Extension of time for holding of Annual general Meeting for the Financial year ended on March 31, 2021-

The Registrar of Companies extended the time to hold AGM, other than the first AGM, for the financial year ended on March 31, 2021 for Companies within the jurisdiction of their respective office, which are unable to hold their AGM for such a period within the due date of holding the AGM by a period of two months from the due date by which the AGM ought to have been held.

The RoC clarified that the extension granted under this Order shall also cover the pending applications filed in Form No. GNL-1 for the extension of AGM for the financial year ended on March 31, 2021 which is yet to be approved.

Further, the applications filed in Form No. GNL-1 for the extension of AGM for the financial year ended on March 31, 2021, which were rejected, where the approval for the extension of AGM up to 2 months from the due date of the AGM shall be deemed to have been granted without any further action on the part of the Company.

Extension of Last date of filing of Cost Audit Report-

On the basis of the several representations received from various stakeholders for extension of the last date, MCA has decided that if cost audit report for the financial year 2020-21 by the cost auditor to the Board of Directors of the companies is submitted by October 31, 2021 then the same would not be viewed as a violation of rule 6(5) of Companies (cost records and audit) Rules, 2014.

Consequently, the cost audit report for the financial year ended on March 31, 2021 shall be filed in e-form CRA-4 within 30 days from the date of receipt of the copy of the cost audit report by the company.

However, in case a company has got an extension of time for holding Annual General Meeting under section 96(1) of the Act then e-form CRA-4 may be filed within the timeline provided under the proviso to rule 6(6) of the Companies (Cost Records and Audit) Rules, 2014.



COMPLIANCE CALENDAR

Direct Taxes

October 07, 2021

- Due date for deposit of tax deducted/collected for the month of September 2021. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
- Due date for deposit of TDS for the period July 2021 to September 2021 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H

October 15, 2021

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of September 2021 has been paid without the production of a challan
- Due date for issue of TDS Certificate for tax deducted under section 194-IB, 194-IA and 194M in the month of August, 2021
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of September, 2021
- Due date for quarterly statement of TCS deposited for the quarter ending September 30, 2021

October 30, 2021

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB and 194M in the month of September, 2021
- Due date for quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2021

October 31, 2021

- Due date for furnishing of Annual audited accounts for each approved programmes under section 35(2AA)
- Quarterly statement of TDS deposited for the quarter ending September 30, 2021
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending September 30, 2021

October 31, 2021

- Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager (if the assessee is required to submit return of income on October 31, 2021)
- Payment of tax under the Direct Tax Vivad se Vishwas Act, 2020 with additional charge
- Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2019-20 and of foreign tax deducted or paid on such income in Form no. 67. (if due date of submission of return of income is October 31, 2021)
- Copies of declaration received in Form No. 60 during April 1, 2021 to September 30, 2021 to the concerned Director/Joint Director
- Report to be furnished in Form 3CEB in respect of international transaction and specified domestic transaction

Indirect Taxes

October 10, 2021

- Due date for filing of GSTR 7 (Tax Deductor) and GSTR 8 (Tax Collector)

October 11, 2021

- Due date for filing of GSTR 1 for Regular Taxpayers.

October 13, 2021

- Due date for filing of GSTR 6 (ISD)
- Due date for GSTR-1 for QRMP

October 18, 2021

- Due date for filing of CMP-08 Composition Taxpayers (July-Sept, 2021)

October 20, 2021

- Due date for filing of GSTR 3B (Regular Tax Payer)
- Due date for filing of GSTR 5 (Non-Resident Taxable Person).
- Due date for filing of GSTR 5A (Non-Resident OIDAR Service Provider).

October 22, 2021

- Due date for filing of GSTR3B opting for QRMP scheme (Specified State-I)

October 24, 2021

- Due date for filing of GSTR3B opting for QRMP scheme (Specified States-II)



Do You Know?

The gross GST revenue collected in the month of September 2021 stood at ₹1,17,010 crore, which is 23% higher than the GST revenues in the same month last year. During the month, revenues from import of goods was 30% higher and the revenues from domestic transaction (including import of services) are 20% higher than the revenues from these sources during the same month last year. The revenue for September 2020 was, in itself at a growth of 4% over the revenue of September 2019 of ₹ 91,916 crore.

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ABOUT US

Nucleus AAR Advisors LLP is an Investment Banking and Risk Advisory Firm providing specialized services in the field of Startup Advisory, M&A Advisory, International Taxation, Audit & Assurance. We partner with entrepreneurs in their critical decision making by providing them various analysis customized as per their requirement. We also help in the effective implementation of decisions and its subsequent monitoring as well.

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