

# EY Tax Alert

## CBIC issues circulars clarifying various provisions under GST

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

### Executive summary

This Tax Alert summarizes recent circulars<sup>1</sup> issued by the Central Board of Indirect Taxes and Customs (CBIC) clarifying various provisions of the Goods and Services Tax (GST) law.

The circulars have been issued in respect of:

- ▶ Tax rate applicable on issuance of debit/credit note for transactions pertaining to pre-GST regime
- ▶ GST on tax collected at source under the provisions of the Income Tax Act, 1961
- ▶ Online submission of documents for refund claim and interpretation of term "inputs"
- ▶ Taxability of courses conducted by Indian Institutes of Management
- ▶ Taxability of supply of food and beverages by an educational institution to its students, faculty and staff
- ▶ Applicability of GST on services of Business Facilitator or a Business Correspondent to banks
- ▶ Availability of credit of service tax as transitional credit under GST

<sup>[1]</sup> Circular No. 76/50/2018-GST, 77/51/2018-GST, 78/52/2018-GST and 79/53/2018-GST, all dated 31 December 2018, Circular No. 82/01/2019-GST, 83/02/2019-GST, 85/04/2019-GST and 86/05/2019-GST all dated 1 January 2019 and Circular No. 87/06/2019-GST dated 2 January 2019

## Background

- ▶ With a view to remove ambiguity and to make the provisions of the GST law enforceable without any hassle, CBIC has issued various clarifications vide circulars dated 31 December 2018.

## Circulars

### Interpretation of certain provisions of GST law<sup>2</sup>

#### *Sale by government departments to unregistered persons*

- ▶ The circular clarifies GST position in respect of supply of used vehicles, seized and confiscated goods, old and used goods, and waste and scrap by government departments.
- ▶ The above supplies, when provided to a registered person, is covered under reverse charge mechanism (RCM) and the tax is payable by the registered recipient.
- ▶ However, if the supplies are made to an unregistered recipient, the government department shall be liable to register and pay GST.

#### *Levy of penalty where Form GSTR-3B is filed after the due date*

- ▶ The circular clarifies that delayed filing of Form GSTR-3B will not attract penalty leviable u/s 73(11) of Central Goods and Services Tax (CGST) Act as the tax along with applicable interest has already been paid.
- ▶ Further, as tax has been paid after the due date in contravention of the provisions of CGST Act, a general penalty under section 125 of the CGST Act may be imposed.

#### *Tax rate applicable on issuance of debit/credit note for transactions pertaining to pre-GST regime*

- ▶ As per the provisions of section 142(2) of the CGST Act, in case of revision of prices of any goods or services on or after the appointed day, a supplementary invoice or debit/credit note may be issued which shall be deemed to have been issued in respect of an outward supply made under the CGST Act.
- ▶ The circular clarifies the rate as per the provisions of the GST Acts (both Central GST and State GST or Integrated GST) would be applicable for such debit/ credit notes.

#### *Applicability of Tax Deducted at Source (TDS) provisions*

- ▶ The circular clarifies that the provisions of TDS are applicable only to such authority or a board or any other body, set up by an Act of Parliament or a State Legislature or established by any government in which fifty one percent or more participation by way of equity or control is with the Government.

#### *GST on Tax Collected at Source (TCS) under the provisions of the Income Tax Act, 1961*

- ▶ Section 15(2) of CGST Act specifies that the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than GST Act, if charged separately by the supplier.
- ▶ The circular clarifies that taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid by the buyer to the supplier is inclusive of TCS.

#### *"Owner of the goods" for the purpose of detention, seizure and release of goods and conveyances in transit*

- ▶ The circular clarifies that if the invoice or other specified document is accompanying the consignment of goods, then either the consignor or the consignee shall be deemed to be the owner of the said goods.
- ▶ If consignment of goods is not accompanied by the invoice or other specified document, then the proper officer will determine who should be declared as the owner of the goods.

#### **Effective date - Withdrawal or denial of composition scheme<sup>3</sup>**

- ▶ The circular clarifies the effective date where the taxpayer withdraws from the composition scheme or where the option of paying tax under composition scheme is denied by the tax authorities due to contravention of the provisions of the law by the taxpayer.
- ▶ In case where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in Form GST CMP-04 but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed.
- ▶ In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules.

#### **Clarification on export of services under GST<sup>4</sup>**

- ▶ The circular clarifies the GST implications where the Indian exporter of services outsources part of the activities to a person outside India and the consideration relating to such outsourced services is not received by the exporter in India.
- ▶ In such case, the Indian exporter would be liable to pay IGST on reverse charge basis on import of services on such portion which has been provided by the supplier located outside India to the recipient of services located

<sup>2</sup> Circular No. 76/50/2018-GST dated 31 December 2018

<sup>3</sup> Circular No. 77/51/2018-GST dated 31 December 2018

<sup>4</sup> Circular No. 78/52/2018-GST dated 31 December 2018

outside India. Furthermore, the Indian exporter would be eligible for taking input tax credit (ITC) of the integrated tax so paid.

- ▶ Even if the full consideration for the services exported is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India, such portion of the consideration shall also be treated as consideration received for export in terms of section 2(6)(iv) of the IGST Act. This is subject to the conditions that:
  - ▶ IGST has been paid by the Indian exporter for import of services; and
  - ▶ RBI, by general instruction or by specific approval, has allowed part of the consideration for such exports to be retained outside India.

#### Clarification on refund related issues<sup>5</sup>

##### *Physical submission of refund claims with jurisdictional proper officer*

- ▶ All documents/ undertaking/ statements/ invoices to be submitted along with the claim for refund in FORM GST RFD-01A shall be uploaded on the common portal at the time of filing of the refund application.
- ▶ However, the taxpayer will still have the option to physically submit the refund application to the jurisdictional officer in FORM GST RFD-01A, along with supporting documents, if he so desires.
- ▶ The ARN will be generated only after the claimant has completed the process of filing the refund application in FORM GST RFD-01A, and has completed uploading of all the supporting documents/ undertaking/ statements/ invoices.
- ▶ The acknowledgement on receipt of complete application or deficiency memo shall continue to be issued manually for the time being.
- ▶ Only the method of submission of documents/ statements/ undertakings/ invoices is being changed from the physical mode to the electronic mode. However, processing of refund application will continue to remain manual for the time being.

##### *Calculation of refund amount for claims of refund of accumulated ITC on account of inverted tax structure*

- ▶ Refund of unutilized ITC in case of inverted tax structure is available where ITC remains unutilized even after adjusting available ITC for payment of output tax liability.
- ▶ As per formula provided in rule 89(5) of the CGST Rules, the term 'Net ITC' covers the ITC availed on all inputs during the relevant period, irrespective of their rate of tax.

##### *Refund of accumulated ITC of Compensation Cess*

- ▶ Vide Circular No. 45/19/2018-GST, it was clarified that refund of accumulated ITC of compensation cess (cess) on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess.
- ▶ Exporters, who did not avail the credit of cess for the period July 2017 to May 2018, have availed the credit post issuance of the abovementioned circular. The present circular provides the mechanism to claim refund of such cess.
- ▶ In case, an exporter, making exports under LUT/Bond, avails credit of cess for the period July 2017 to May 2018 by disclosing it in Form GSTR-3B filed for the month of July 2018, he is required to re-compute refund of cess in the respective months. Thus, the refund needs to be re-computed for each month from July 2017 to May 2018 as if the same was available in the respective months.
- ▶ Further, refund is required to be calculated for the month of July 2018 considering the cess (pertaining to July 2017 to May 2018) as cess availed in the month of July 2018.
- ▶ If the aggregate of refund of cess so re-computed for each month exceeds the amount of refund computed for the month of July 2018 (above), the excess amount will not be considered for the purpose of refund.
- ▶ The recomputed amount of eligible refund of cess in respect of past periods, would not be admissible in respect of consignments exported on payment of IGST. This process would be applicable for application for refund of compensation cess (not claimed earlier) in respect of the past period,
- ▶ Further, ITC of compensation cess on input is available in case the said input is used to produce intermediate goods (exempt from GST) and such intermediate goods is used to manufacture the final product which is taxable.

##### *ITC of GST paid on invoices of earlier tax period availed in subsequent tax period*

- ▶ 'Net ITC' as defined in rule 89(4) of the CGST Rules means ITC availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed.
- ▶ ITC can be said to have been 'availed' when it is entered into the electronic credit ledger of the registered person.
- ▶ Thus, ITC availed in September 2017 in respect of invoices issued in August 2017 cannot be excluded from the calculation of the refund amount for the month of September 2017.

<sup>5</sup> Circular No. 79/53/2018-GST dated 31 December 2018

### *Interpretation of the term “inputs”*

- ▶ On certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input.
- ▶ The circular clarifies that ITC of the GST paid on inputs shall be available to a registered person as long as he uses or intends to use such inputs for the purposes of his business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act.
- ▶ Thus, the GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act.
- ▶ Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, which has been charged as a revenue expense in the books of account, cannot be held to be capital goods

### *Refund of accumulated ITC of input services and capital goods arising on account of inverted tax structure*

- ▶ Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies).
- ▶ In order to align the CGST Rules with the CGST Act, Notification No. 26/2018-Central Tax was issued wherein it was stated that the term Net ITC, as used in the formula for calculating the maximum refund amount under rule 89(5) of the CGST Rules, shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.
- ▶ In view of the above, both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted tax structure.

### **Applicability of GST on various programs conducted by IIMs<sup>6</sup>**

- ▶ With effect from 31 January 2018 i.e., the date from which the IIM Act, 2018 came into effect, all the Indian Institutes of Management (IIMs) will qualify as 'educational institutions' as defined under Notification No. 12/2017-Central Tax (Rate).
- ▶ For the period from 1 July 2017 to 30 January 2018,

IIMs were not covered by the definition of educational institutions. Thus, they were not entitled to exemption under Sl. No. 66 of the said notification.

- ▶ However, there was a specific exemption in case of three specified programs of IIMs under Sl. No. 67 of Notification No. 12/2017- Central Tax (Rate). Therefore, for the period from 1 July 2017 to 30 January 2018, GST exemption would be available only to the specified three programs.
- ▶ With effect from 31 January 2018, all IIMs are eligible for exemption benefit under GST. Thus, the courses which are offered on or after 31 January 2018 are eligible for exemption under Sl. No. 66 of the said notification.
- ▶ However, so far as short duration courses are concerned, where IIMs issue participation certificate to executives/ professionals (participants), the same are not exempt and attract GST @ 18%.

### **Applicability of GST on supply by ADB and IFC<sup>7</sup>**

- ▶ The Asian Development Bank (ADB) Act, 1966 and the International Finance Corporation (IFC) Act, 1958 provide that notwithstanding anything to the contrary contained in any other law, the Bank/ Corporation, its assets, properties, income and its operations and transactions shall be exempt from all the taxation and from all customs duties.
- ▶ The Customs, Excise and Service Tax Appellate Tribunal, Mumbai in the case of Coastal Gujarat Power Ltd.<sup>8</sup> has held that when the enactments that honor international agreements specifically immunize the operations of the service provider from taxability, a law contrary to that in the form of section 66A of Finance Act, 1994 will not prevail.
- ▶ Thus, the services provided by ADB and IFC are exempt from GST. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.

### **GST rate applicable on supply of food and beverage services by educational institution<sup>9</sup>**

- ▶ Notification No. 11/2017-CT (Rate) provides GST rate of 5% on supply of food and beverages services which take place at canteen, mess, cafeteria of an institution such as school, college, hospitals etc.
- ▶ Further, supply of services by an educational institution to its students, faculty and staff is exempt vide Sl. No. 66(a) of Notification No. 12/2017-CT (Rate).
- ▶ The circular clarifies that both the notifications should be read together. A supply which is specifically covered by any entry of Notification No. 12/2017-CT (Rate) is exempt from GST notwithstanding the fact that GST rate has been prescribed for the same under Notification No. 11/2017-CT (Rate).

<sup>6</sup> Circular No. 82/01/2019-GST dated 1 January 2019

<sup>7</sup> Circular No. 83/02/2019-GST dated 1 January 2019

<sup>8</sup> 2012 (28) S.T.R. 377 (Tri. - Mumbai)

<sup>9</sup> Circular No. 85/04/2019-GST dated 1 January 2019

- ▶ Thus, supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Notification No. 12/2017.
- ▶ To remove ambiguity, the words "school, college" have been omitted from the Notification No. 11/2017-CT (Rate) vide Notification No. 27/2018-CT (Rate) dated 31 December 2018.
- ▶ The intention behind the amendment in section 140(1), to include the expression "eligible duties" has been indicated in the "Rationale/ Remarks" column of the draft proposals for amending the GST law. It is clear that the transition of credit of taxes paid under section 66B of the Finance Act, 1994 was never intended to be disallowed under section 140(1) and therefore no such remark to that effect was present in the document.

#### **GST on services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company<sup>10</sup>**

- ▶ Referring to the RBI's circular<sup>11</sup> and subsequent instructions, the circular clarifies that the banking company is the service provider in the BF/BC model operated by a banking company. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.
- ▶ Sl. No. 39 of Notification No. 12/2017-CT (Rate) provides exemption to services by BF/BC to banking company with respect to accounts in its rural branch.
- ▶ The circular further clarifies that the services provided by a BF/BC to a banking company in their respective individual capacities should fall under the Heading 9971 (Financial and related services) and such services should be with respect to accounts in a branch located in the rural area of the banking company.
- ▶ The criteria for classification of branch of a bank as located in rural area and the services which can be provided by BF/BC, is governed by the RBI guidelines. Therefore, classification adopted by the bank in terms of RBI guidelines in this regard should be accepted.

#### **Availability of credit of service tax as transitional credit under GST<sup>12</sup>**

- ▶ Section 140(1) of CGST Act was amended with retrospective effect to allow transition of CENVAT credit under the erstwhile indirect tax regime viz. Central Excise and Service Tax, in respect of "eligible duties" only.
- ▶ In this regard, doubts had been expressed as to whether the expression "eligible duties" would include CENVAT credit of Service Tax within its scope or not.
- ▶ The circular clarifies that CENVAT credit of service tax paid under section 66B of the Finance Act, 1994 was available as transitional credit under section 140(1) of the CGST Act and that legal position has not changed due to amendment of section 140(1) on account of following reasons:
  - ▶ The amendment in provisions of section 140(1) and the explanations to section 140 need to be read harmoniously such that neither any provision of the amendment becomes otiose nor is the legislative intent of the amendment defeated.

- ▶ Under tax statutes, the word "duties" is used interchangeably with the word "taxes" and in the present context, the two words should not be read in a disharmonious manner.
- ▶ It has been decided by CBIC not to notify certain clauses of CGST (Amendment) Act, 2018 which link Explanation 1 and Explanation 2 of section 140 to section 140(1). This would ensure that the credit allowed to be transitioned under section 140(1) is not linked to credit of goods in stock, as provided under Explanation 1, and credit of goods and services in transit, as provided under Explanation 2.

<sup>10</sup> Circular No. 86/05/2019-GST dated 1 January 2019

<sup>11</sup> Circular No. DBOD. No. BL.BC. 58/22.01.001/2005-2006 dated 25 January 2006

<sup>12</sup> Circular No. 87/06/2019-GST dated 2 January 2010

## Comments

Clarification on various issues concerning refund may ensure uniformity in implementing provisions of the law and eliminate unwarranted subjectivity and litigation. Online filing of documents for refund claim and interpretation of the term "inputs" by the government are welcome move and might benefit the industry at large.

Applicability of GST rate on issuance of debit/credit note in respect of pre-GST transactions may adversely affect the taxpayers who have adopted a position to charge tax at the rate as applicable in the pre-GST regime. As there was no clarity on the rate applicable, the government should provide relief to the taxpayers by allowing the debit/ credit notes issued till 31 December 2018 with pre-GST rates.

The much-awaited clarity on transition of credit of service tax as CGST credit reflects the intention of the law and might help avoid disputes with the tax authorities.

Inclusion of TCS in the value of supply on which GST is levied may become impractical considering the provisions of the Income Tax Act, 1961 which provide that GST shall be included for the purpose of computing TCS.

Restricting the refund of accumulated ITC on account of compensation cess basis the clarification issued could result in a loss to exporter. Since the intent for such restriction is not clear from the circular, exporters may seek further clarify on admissibility of balance cess lying in credit ledger.



# Our offices

## Ahmedabad

2nd floor, Shivalik Ishaan Near C.N.  
Vidhyalaya Ambawadi  
Ahmedabad - 380 015  
Tel: +91 79 6608 3800  
Fax: +91 79 6608 3900

## Bengaluru

6th, 12th & 13th floor "UB City",  
Canberra Block No.24 Vittal Mallya  
Road Bengaluru - 560 001  
Tel: +91 80 4027 5000  
+91 80 6727 5000  
+91 80 2224 0696  
Fax: +91 80 2210 6000

## Ground Floor, 'A' wing Divyasree Chambers

# 11, O'Shaughnessy Road Langford  
Gardens Bengaluru - 560 025  
Tel: +91 80 6727 5000  
Fax: +91 80 2222 9914

## Chandigarh

1st Floor, SCO: 166-167 Sector 9-C,  
Madhya Marg Chandigarh - 160 009  
Tel: +91 172 331 7800  
Fax: +91 172 331 7888

## Chennai

Tidel Park, 6th & 7th Floor  
A Block (Module 601,701-702) No.4,  
Rajiv Gandhi Salai Taramani, Chennai -  
600 113  
Tel: +91 44 6654 8100  
Fax: +91 44 2254 0120

## Delhi NCR

Golf View Corporate Tower B Sector 42,  
Sector Road Gurgaon - 122 002  
Tel: +91 124 464 4000  
Fax: +91 124 464 4050

## 3rd & 6th Floor, Worldmark-1 IGI Airport Hospitality District Aerocity, New Delhi - 110 037

Tel: +91 11 6671 8000  
Fax +91 11 6671 9999

## 4th & 5th Floor, Plot No 2B

Tower 2, Sector 126  
NOIDA - 201 304  
Gautam Budh Nagar, U.P.  
Tel: +91 120 671 7000  
Fax: +91 120 671 7171

## Hyderabad

Oval Office, 18, iLabs Centre Hitech  
City, Madhapur Hyderabad - 500 081  
Tel: +91 40 6736 2000  
Fax: +91 40 6736 2200

## Jamshedpur

1st Floor, Shantiniketan Building  
Holding No. 1, SB Shop Area Bistupur,  
Jamshedpur - 831 001  
Tel: +91 657 663 1000  
BSNL: +91 657 223 0441

## Kochi

9th Floor, ABAD Nucleus  
NH-49, Maradu PO  
Kochi - 682 304  
Tel: +91 484 304 4000  
Fax: +91 484 270 5393

## Kolkata

22 Camac Street 3rd  
Floor, Block 'C' Kolkata -  
700 016  
Tel: +91 33 6615 3400  
Fax: +91 33 2281 7750

## Mumbai

14th Floor, The Ruby  
29 Senapati Bapat Marg Dadar  
(W), Mumbai - 400 028  
Tel: +91 22 6192 0000  
Fax: +91 22 6192 1000

5th Floor, Block B-2 Nirlon  
Knowledge Park  
Off. Western Express Highway  
Goregaon (E)  
Mumbai - 400 063  
Tel: +91 22 6192 0000  
Fax: +91 22 6192 3000

## Pune

C-401, 4th floor Panchshil  
Tech Park Yerwada  
(Near Don Bosco School)  
Pune - 411 006  
Tel: +91 20 6603 6000  
Fax: +91 20 6601 5900

## Ernst & Young LLP

EY | Assurance | Tax | Transactions | Advisory

### About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [ey.com](http://ey.com).

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit [www.ey.com/in](http://www.ey.com/in).

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camac Street, 3rd Floor, Block C, Kolkata - 700016

© 2019 Ernst & Young LLP. Published in India.  
All Rights Reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither Ernst & Young LLP nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

Join India Tax Insights from EY on 



Download the EY India Tax  
Insights App Logo

[ey.com/in](http://ey.com/in)



@EY\_India



EY|LinkedIn



EY India



EY India careers



ey\_indiacareers