

The guidelines is for filing appeals or applications by the Department under the Central Goods and Services Tax Act, 2017 (CGST Act). It sets monetary limits for filing appeals to reduce unnecessary litigation and expedite the resolution of cases.

Key Points:

1. **National Litigation Policy:** Encourages efficient use of judicial resources by setting thresholds for appeals and discouraging appeals in cases with established precedents.
2. **Section 120 of the CGST Act:** Grants the Central Board of Indirect Taxes & Customs (the Board) the authority to set monetary limits for filing appeals.
3. **Monetary Limits for Appeals:**
 - GSTAT (Goods and Service Tax Appellate Tribunal):** ₹20,00,000
 - High Court:** ₹1,00,00,000
 - Supreme Court:** ₹2,00,00,000
4. **Principles for Determining Monetary Limits:**
 - Tax Dispute:** Consider the aggregate tax amount.
 - Interest Dispute:** Consider the interest amount.
 - Penalty Dispute:** Consider the penalty amount.
 - Late Fee Dispute:** Consider the late fee amount.
 - Combination of Interest, Penalty, and Late Fee:** Consider the aggregate amount.
 - Erroneous Refund:** Consider the refund amount.
5. **Exclusions:** The monetary limits do not apply in the following circumstances:
 - Provisions of the CGST Act or related acts are held ultra vires to the Constitution.
 - Rules or regulations are held ultra vires to the parent act.
 - Orders, notifications, instructions, or circulars issued by the government, or the Board are held ultra vires.
 - Matters related to valuation, classification, refunds, place of supply, and recurring issues.
 - Cases with adverse comments or costs imposed against the government or officers.
 - Any other case deemed necessary by the Board in the interest of justice or revenue.
6. **Other Important Points:**
 - Appeals should be based on merit, not just the amount involved.
 - Non-filing of appeal due to monetary limits does not set a precedent.
 - Departmental representatives must inform the courts if an appeal was not filed due to the monetary limit.

Circular No.207/1/2024-GST dated-26-06-2024

02

Clarifications on Special Procedure for Manufacturers of Specified Commodities

A special procedure for manufacturers of certain goods was introduced by the government to streamline compliance. The original procedure from Notification No. 30/2023 was replaced by a new procedure in Notification No. 04/2024 on 05.01.2024. Various trade associations sought clarifications on the implementation of this new procedure.

Sr No	Issue Raised	Clarification Provided
1	Non-availability of make, model number, and machine number	Make and model number are optional in Table 6 of FORM GST SRM-I. If the make is not available, use the year of purchase. The machine number is mandatory; if not available, assign a numeric number.
2	Electricity consumption rating not available	Declare the rating based on available details. If not available, get it calculated and certified by a Chartered Engineer and upload the certificate with FORM GST SRM-I.
3	Reporting value in Column 8 of Table 9 of FORM GST SRM-II for goods with no MRP	Use the sale price of the manufactured goods for export markets.
4	Qualification of Chartered Engineer for certification	Must be a practicing Chartered Engineer with a certificate from the Institute of Engineers India (IEI).
5	Applicability to manufacturing units in Special Economic Zone (SEZ)	The special procedure does not apply to SEZ units.
6	Applicability to manual processes using electric operated heat sealer and seamer	The procedure does not apply to manual seamers/sealers or manual packing operations, such as post-harvest packing of tobacco leaves.
7	Serial number of machine required in Table 6 of FORM GST SRM-I for multiple machines	Report the serial number of the machine used for final packing.
8	Compliance responsibility in job work or contract manufacturing	The procedure applies to all involved in the manufacturing process, including job workers/contract manufacturers. If the job worker/contract manufacturer is unregistered, the principal manufacturer is responsible.

Conclusion: These clarifications ensure uniform implementation of the special procedure for manufacturers. They provide clear guidelines on handling various issues, making compliance easier and more consistent across the industry. The possible impact includes smoother compliance processes and reduced confusion among manufacturers.

Circular No.208/02/2024-GST-Dated 26-06-2024

The provision of clause (ca) was introduced in Section 10(1) of the IGST Act effective from 01.10.2023, to determine the place of supply of goods when sold to unregistered persons. This provision addresses issues related to the place of supply when the billing address differs from the delivery address, particularly for e-commerce transactions.

❖ **Key Points Presented in simple words**

1. What is the new clause (ca) in Section 10(1) of the IGST Act?

Clause (ca) determines the place of supply for goods sold to unregistered persons based on the address recorded in the invoice:

- If an address is recorded, that location is the place of supply.
- If no address is recorded, the supplier's location is the place of supply.
- Recording the name of the State in the invoice is considered as recording the address.

2. What happens if the billing address and delivery address are different?

When goods are supplied to an unregistered person through an e-commerce platform and the billing address differs from the delivery address, the place of supply is the delivery address.

Sr No	Issue	Clarification
1	Different billing and delivery addresses	If Mr. A (an unregistered person) in State X orders a mobile phone through an e-commerce platform to be delivered in State Y but provides a billing address in State X, the place of supply is State Y (delivery address).
2	Recording the address on the invoice	For supplies to unregistered persons, if the billing and delivery addresses differ, the supplier can record the delivery address as the recipient's address on the invoice to determine the place of supply.

Example:

- Scenario: Mr. A in State X orders a mobile phone to be delivered in State Y but has a billing address in State X.
- Clarification: The place of supply will be State Y (delivery address)

Possible Impact:

1. **Increased Compliance:** Ensures suppliers correctly determine the place of supply for goods sold to unregistered persons.
2. **Simplified E-commerce Transactions:** Provides clear rules for transactions through e-commerce platforms.
3. **Uniformity in Implementation:** Ensures consistent application of the law across different regions and scenarios.

Conclusion:

This clarification helps ensure uniform application of the law regarding the place of supply for goods sold to unregistered persons. It provides clear guidance on handling scenarios where the billing address and delivery address differ, particularly in e-commerce transactions. This helps in accurate determination of the place of supply and ensures compliance with the IGST Act provisions.

Circular No.209/3/2024-GST-Dated 26-06-2024

04

Clarification on Valuation of Import of Services by Related Persons

As per the CGST Act, importing services from a related person or other establishments outside India is considered a supply, even without consideration. This clarification addresses the taxability and valuation of such services when the recipient is eligible for full input tax credit (ITC).

❖ **Key Points Presented in simple words**

1. What does Schedule I of the CGST Act state about import of services?

Schedule I states that import of services by a person from a related person or other establishments outside India is treated as a supply even if no consideration is involved.

2. What issues have been raised by trade and industry?

There have been concerns about demands being raised for tax on reverse charge basis for activities undertaken by related persons outside India. These concerns arise from an expansive interpretation of the deeming fiction in Schedule I, though no consideration is involved, and the activities are not considered supplies by the related person in India.

3. What is Rule 28 of the CGST Rules about?

Rule 28 specifies how to determine the value of supply of goods or services between related or distinct persons. It includes a proviso stating that if the recipient is eligible for full ITC, the value declared in the invoice is deemed to be the open market value.

4. How does this apply to services between related persons?

The same principle applies to services between related persons, including import of services. If the recipient is eligible for full ITC, the value declared in the invoice is considered the open market value.

5. What should be done in case of import of services from a related foreign person?

In such cases, the registered person in India must pay tax on reverse charge basis and issue a self-invoice. If the recipient has full ITC and no invoice is issued, the value may be deemed as Nil and considered the open market value.

Sr No	Issues	Clarification
1	Schedule I of CGST Act	Import of services by a person from a related person outside India is treated as a supply even without consideration.
2	Concerns Raised	Demands for tax on reverse charge basis for activities by related persons outside India, with no consideration involved.
3	Rule 28 of CGST Rules	Specifies valuation of supply between related/distinct persons; value declared in invoice is deemed open market value if full ITC is available.
4	Application to Related Persons	Applies equally to import of services between related persons; value in invoice is open market value if full ITC is available.
5	Import of Services from Related Foreign Person	Registered person in India must pay tax on reverse charge basis and issue self-invoice. If no invoice, value may be deemed Nil and considered open market value

Example

- **Scenario:** A company in India imports marketing services from its related entity in the USA.
- **Clarification:** The Indian company must pay tax on reverse charge basis. If the Indian company is eligible for full ITC, the value declared in the self-invoice is deemed the open market value. If no invoice is issued, the value is deemed Nil.

Possible Impact:

1. **Increased Compliance:** Ensures registered persons correctly determine the value of import of services from related persons.
2. **Simplified Procedures:** Provides clear guidelines for issuing self-invoices and determining open market value.
3. **Uniformity in Implementation:** Ensures consistent application of the law across different regions and scenarios.

Conclusion:

These clarifications ensure uniform application of the law regarding the import of services from related persons when the recipient is eligible for full ITC. It simplifies compliance and ensures that the valuation of such services is consistent and fair

Circular No.210/4/2024-GST-Dated 26-06-2024

The trade and industry have sought clarification on the time limit for availing Input Tax Credit (ITC) under Section 16(4) of the CGST Act for tax paid under Reverse Charge Mechanism (RCM) on supplies received from unregistered persons.

❖ **Key Points Presented in simple words:**

1. What is the issue raised by trade and industry?

The issue is about determining the relevant financial year for availing ITC when tax is paid under RCM on supplies from unregistered persons. Field formations and the industry have different views on whether the relevant year is when the supply was received or when the invoice was issued.

2. What does Section 16(2)(a) of the CGST Act state?

Section 16(2)(a) states that ITC can be availed only if the registered person has a tax invoice or other prescribed tax-paying document.

3. What does Rule 36(1)(b) of the CGST Rules prescribe?

Rule 36(1)(b) prescribes that ITC can be availed based on an invoice issued under Section 31(3)(f) of the CGST Act, subject to tax payment.

4. What is the provision of Section 31(3)(f) of the CGST Act?

Section 31(3)(f) states that a registered person liable to pay tax under RCM must issue an invoice for goods or services received from an unregistered supplier.

5. What is Section 16(4) of the CGST Act about?

Section 16(4) sets the time limit for availing ITC, which is until the 30th of November following the end of the financial year to which the invoice pertains or the filing of the annual return, whichever is earlier.

Sr No	Issue	Clarification
1	Relevant Year for ITC under RCM	ITC can be availed based on the invoice issued by the recipient under Section 31(3)(f). The relevant financial year for Section 16(4) is the year the invoice was issued.
2	Issuing Invoice and Paying Tax under RCM	The recipient must issue the invoice and pay tax in cash. ITC cannot be availed without an invoice or tax-paying document.
3	Delayed Issuance of Invoice	If the invoice is issued late, interest on delayed tax payment applies. The relevant year for ITC remains the year of invoice issuance.

4	Penal Actions for Delayed Invoice Issuance	Delayed issuance may attract penalties under Section 122 of the CGST Act.
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Example:

- **Scenario:** A company in India receives services from an unregistered supplier in the previous financial year but issues the invoice and pays the tax under RCM in the current financial year.
- **Clarification:** The relevant financial year for availing ITC is the current financial year in which the invoice was issued, not the previous year when the service was receive

Possible Impact:

1. **Increased Compliance:** Ensures registered persons correctly determine the relevant year for availing ITC.
2. **Simplified Procedures:** Provides clear guidelines for issuing invoices and determining the time limit for ITC.
3. **Uniformity in Implementation:** Ensures consistent application of the law across different regions and scenarios.

Conclusion:

The clarification ensures that the time limit for availing ITC under RCM for supplies from unregistered persons is based on the financial year in which the recipient issues the invoice. This helps in avoiding confusion and ensures uniform application of the law.

Circular No.211/5/2024-GST-dated 26-06-2024

06

Clarification on Evidence of Compliance for Discounts Under Section 15(3)(b)(ii) of CGST Act

Suppliers offering discounts through tax credit notes need to ensure that these discounts are not included in the taxable value only if the recipient reverses the input tax credit (ITC) attributable to the discount. However, there is currently no system to verify this on the common portal. This clarification provides a temporary mechanism to verify compliance.

❖ **Key Points Presented in simple words:**

1. What is Section 15(3)(b)(ii) of the CGST Act?

Section 15(3) allows the exclusion of discounts from the value of supply if:

- The discount is agreed upon at or before the time of supply.

- It is linked to specific invoices.
- The recipient reverses the ITC related to the discount.

2. What is the issue?

There is no current system functionality for suppliers or tax officers to verify if the ITC attributable to discounts has been reversed by the recipient.

3. What is the temporary solution?

Until a system functionality is available, suppliers can obtain a certificate from the recipient, issued by a Chartered Accountant (CA) or Cost Accountant (CMA), confirming the reversal of ITC.

Sr No	Issue	Clarification
1	Section 15(3) Conditions	Discounts are excluded from taxable value if agreed before supply, linked to invoices, and ITC is reversed by the recipient.
2	Verification Issue	No system to verify ITC reversal by the recipient for discounts given via tax credit notes.
3	Temporary Solution	Obtain a CA/CMA certificate or recipient's undertaking certifying ITC reversal.
4	Details in CA/CMA Certificate	Certificate should include credit note details, relevant invoice numbers, amount of ITC reversal, and FORM GST DRC-03/return details.
5	Verification of Certificates	CA certificates verified via ICAI website; CMA certificates via ICMAI website using UDIN.
6	Threshold for CA/CMA Certificate	If the discount amount is \leq ₹5,00,000 in a financial year, a recipient's undertaking is sufficient instead of a CA/CMA certificate.
7	Use of Certificates/Undertakings	These documents serve as evidence for compliance and should be produced during audits, investigations, etc. They can also be used for past periods if needed.

Example:

- **Scenario:** A supplier offers a discount through a tax credit note after supply, and the recipient reverses the ITC.
- **Clarification:** The supplier should obtain a CA/CMA certificate or an undertaking from the recipient confirming the ITC reversal and provide this during any audits or investigations.

Possible Impact:

1. **Increased Compliance:** Ensures that suppliers and recipients adhere to the conditions for excluding discounts from the taxable value.
2. **Simplified Verification:** Provides a clear, temporary method for verifying ITC reversal until system functionality is available.

3. **Uniform Implementation:** Ensures consistent application of the law across different regions and scenarios.

Conclusion:

This clarification provides a temporary mechanism for verifying ITC reversal related to discounts offered through tax credit notes. Suppliers should obtain certificates or undertakings from recipients to ensure compliance with Section 15(3)(b)(ii) of the CGST Act.

Circular No.212/6/2024-GST-dated 26-06-2024

07

Clarification on GST for ESOP/ESPP/RSU Provided by Overseas Holding Companies

There have been questions about whether providing Employee Stock Options (ESOP), Employee Stock Purchase Plans (ESPP), or Restricted Stock Units (RSU) to employees by an Indian company's foreign holding company is subject to GST.

1. What are ESOPs, ESPPs, and RSUs?

These are methods companies use to give employees shares or securities as part of their compensation:

- **ESOP/ESPP:** Options to buy shares.
- **RSU:** Shares awarded based on performance.

2. How does the process work?

- The Indian company offers its employees shares of its foreign holding company as part of their compensation.
- Employees exercise these options and receive shares from the foreign holding company.
- The Indian company reimburses the foreign holding company for the cost of these shares.

3. Is GST applicable on this transaction?

- **No GST on Securities:** Shares and securities are not considered goods or services under GST law, so the transfer of shares itself is not taxable.
- **No GST on Employee Compensation:** Compensation in the form of shares from the employer to the employee is not considered a supply of goods or services and is not taxable under GST.

4. When is GST applicable?

- **Additional Fees:** If the foreign holding company charges the Indian company any additional fee, markup, or commission for facilitating the issuance of shares, this is considered a supply of services.

- **Reverse Charge Basis:** The Indian company must pay GST on this additional amount on a reverse charge basis.

Summary of GST Application:

Scenario	GST Applicability
Transfer of shares/securities from foreign holding company to employees of Indian subsidiary	Not Taxable
Reimbursement of share cost by Indian subsidiary to foreign holding company	Not taxable
Additional fee/markup/commission charged by foreign holding company	Taxable on reverse charge basis

Conclusion:

- **Not Taxable:** Transfer of shares and reimbursement at cost.
- **Taxable:** Additional fees or markups charged by the foreign holding company.

This clarification helps ensure that companies correctly understand when GST is applicable in transactions involving employee stock options and related securities provided by foreign holding companies.

Circular No.213/7/2024-GST-dated 26-06-2024

08

Clarification on Reversal of Input Tax Credit for Life Insurance Premiums

This circular provides clarification regarding the reversal of input tax credit (ITC) for portions of life insurance premiums not included in the taxable value under Rule 32(4) of the Central Goods and Services Tax (CGST) Rules, 2017.

❖ **Key Points :**

- **Issue:**

Whether the portion of the life insurance premium not included in the taxable value should be considered an exempt supply/non-taxable supply for the purpose of ITC reversal under section 17(1) of the CGST Act read with Rules 42 & 43 of the CGST Rules.

- **Life Insurance Definition:**

Life insurance business includes contracts for insurance on human life, annuities, disability benefits, and superannuation allowances.

- **Life Insurance Premium Components:**

Premiums for life insurance may include both a component for risk cover and an investment/savings component. Rule 32(4) of the CGST Rules specifies how to determine the taxable value of life insurance premiums, excluding the investment/savings portion.

- **Exempt Supply Definition:**

Exempt supply includes nil-rated supply, wholly exempt supply, and non-taxable supply. Non-taxable supply is one not leviable to tax under CGST or IGST Acts.

- **Clarification on Premium Treatment:**

Life insurance services are taxable. The portion of the premium not included in the taxable value under Rule 32(4) is not considered nil-rated, wholly exempt, or non-taxable. Therefore, this portion should not be treated as exempt or non-taxable for ITC reversal purposes.

- **Input Tax Credit Reversal:**

Rule 42 of the CGST Rules requires reversal of ITC if the goods/services are used partly for business or partly for making exempt supplies. Since the portion of the premium not included in taxable value is neither exempt nor non-taxable, it does not attract ITC reversal under section 17(1) and (2) of the CGST Act.

Circular No.214/8/2024-GST-dated 26-06-2024

09

Clarification on Taxability of Salvage/Wreck Value in Motor Vehicle Insurance Claims

This circular clarifies whether GST is payable by insurance companies on the salvage or wreck value in the claim assessment for motor vehicle damage.

Key Points:

Issue:

- Whether insurance companies need to pay GST on the salvage or wreck value when assessing claims for motor vehicle damage.

Supply Definition:

- Under GST law, the taxable event is the 'supply' of goods or services.
- Supply includes all forms of supply made for consideration in the course of business as defined under section 7 of the CGST Act.

Insurance Services:

- Insurance companies provide the service of insuring vehicles against damage.
- In return, they charge a premium from the vehicle owner.
- They are responsible for repairing the damaged vehicle or compensating the insured person as per the policy terms.

Claim Settlement and Salvage Value:

- The insurance company's liability is often limited to the Insured's Declared Value (IDV) of the vehicle minus the salvage value in total loss cases.
- The salvage remains the property of the insured unless the contract states otherwise.
- If the claim is settled by deducting the salvage value from the insurance payout, the ownership of the salvage remains with the insured.
- In these cases, the salvage value deduction is not considered a supply by the insurance company, and thus, there is no GST liability on the insurance company for the salvage value.

Full IDV Claim Settlement:

- If the insurance contract provides for a full IDV settlement without deducting the salvage value, the salvage becomes the property of the insurance company.
- The insurance company must then handle or dispose of the salvage.
- In such cases, the insurance company is liable to pay GST on the disposal/sale of the salvage.

Circular No.215/9/2024-GST-dated 26-06-2024

10

Clarification on GST Liability and Input Tax Credit (ITC) Availability in Warranty/Extended Warranty Cases

This circular provides further clarifications on GST liability and ITC availability in cases involving warranty and extended warranty.

Key Points Issue:

- Clarification on GST liability and ITC availability for goods or parts replaced under warranty.
- Clarification on scenarios where distributors replace parts/goods under warranty and later get replenished by the manufacturer.
- Clarification on the nature of supply for extended warranties.

Sr No	Issue	Clarification
1	GST liability and ITC reversal for replacement of goods under warranty.	The clarification in Circular No. 195/07/2023-GST dated 17.07.2023 for replacement of parts also applies to replacement of goods as such. Whenever 'parts' is mentioned, it should be read as 'goods or its parts, as the case may be'.
2	Distributor replacing parts/goods under warranty from own stock and	When the distributor replaces parts/goods from their own stock under warranty and gets replenished by the

	getting replenished by the manufacturer.	manufacturer without additional cost, no GST is payable on the replenishment, and no ITC reversal is required.
3	Nature of supply for extended warranty at the time of original supply, if different from the supplier of goods.	If the extended warranty is provided by a different supplier than the goods supplier at the time of original supply, it is treated as a separate supply of services, not a composite supply with the goods.
4	Nature of supply for extended warranty sold after the original supply of goods.	Extended warranty sold after the original supply is treated as a separate supply of services distinct from the original supply of goods. GST is applicable on this supply of services.

Circular No.216/10/2024-GST-dated 26-06-2024

11

Clarification on ITC Entitlement for Insurance Companies on Motor Vehicle Repair Expenses

Insurance companies providing motor vehicle insurance settle repair claims in two modes: Cashless and Reimbursement. There are questions about the entitlement of Input Tax Credit (ITC) for insurance companies when they reimburse repair expenses.

1. Modes of Claim Settlement

- **Cashless Mode:** Insurance companies pay the garage directly for the repair charges.
- **Reimbursement Mode:** Insured person pays the garage first and gets reimbursed by the insurance company.

2. Issue Raised

Field formations have raised objections about ITC entitlement for insurance companies in the Reimbursement Mode, claiming that the repair service is provided to the insured, not the insurer.

Sr No	Issue	Clarification
1	ITC on Reimbursement Mode	<p>Issue: Whether ITC is available to insurance companies for repair expenses reimbursed in Reimbursement Mode.</p> <p>Clarification: Yes, ITC is available to insurance companies. The insurance company is considered the recipient of the repair services, even if the insured pays the garage initially. The repair invoices issued to the insurance company qualify for ITC as per the CGST Act.</p>
2	Invoices with Additional Costs	<p>Issue: How to handle invoices with amounts exceeding the approved claim cost.</p> <p>Clarification: - If two separate invoices are issued (one for approved claim cost to the insurance company and one for excess amount to the insured), ITC is available on the invoice issued to the insurance company. If a single invoice is issued for the full amount but the</p>

		insurance company reimburses only the approved claim cost, ITC is available only on the reimbursed amount.
3	Invoices Not in Insurance Company's Name	Issue: ITC entitlement when the invoice is not in the name of the insurance company. Clarification: ITC is not available if the invoice is not in the name of the insurance company, as it does not satisfy the conditions of Section 16(2) of the CGST Act.

Example:

1.Reimbursement Mode:

- The insured pays the garage ₹50,000 for repairs.
- The insurance company reimburses the insured ₹40,000 (approved claim cost).
- **Clarification:** ITC is available on the ₹40,000.

2.Invoices with Additional Costs:

- The garage issues an invoice of ₹60,000, including ₹10,000 for non-covered repairs.
- The insurance company reimburses the insured ₹50,000.
- **Clarification:** ITC is available on the ₹50,000.

3. Invoices Not in Insurance Company's Name:

- The garage issues an invoice to the insured.
- **Clarification:** ITC is not available as the invoice is not in the insurance company's name

Possible Impact

1. **Increased Compliance:** Ensures that insurance companies correctly claim ITC on repair expenses.
2. **Simplified Procedures:** Provides clear guidelines for handling invoices and reimbursement claims.
3. **Uniform Implementation:** Ensures consistent application of the law across different regions and scenarios.

Conclusion

This clarification ensures that insurance companies understand when they are entitled to ITC for motor vehicle repair expenses. It provides a clear mechanism for determining ITC eligibility, ensuring uniform application of the law.

Circular No.217/11/2024-GST-dated 26-06-2024

Questions have arisen regarding the taxability of loans provided by an overseas affiliate to its Indian affiliate or between related persons, where the consideration is only by way of interest or discount. The concern is whether GST is applicable on such transactions.

Key Points explained Simply:

1. Is providing loans between related entities considered a supply under GST?

Yes, the service of granting loans or credit advances between related entities is considered a supply under GST, even if no consideration is involved.

2. Are loans exempt from GST when the consideration is interest or discount?

Yes, loans are exempt from GST if the only consideration is interest or discount, as per Notification No. 12/2017-Central Tax (Rate).

3. What about processing or administrative fees?

Any fees such as processing fees, administrative charges, or loan granting charges are taxable under GST.

Sr No	Issue	Clarification
1	Providing Loans by Overseas Affiliate or Related Person	<p>Issue: Whether providing loans with only interest or discount as consideration is taxable</p> <p>Clarification: No, such loans are not taxable under GST.</p>
2	Exemption of Loans with Interest or Discount	<p>Issue: Are loans with interest or discount exempt from GST?</p> <p>Clarification: Yes, these loans are exempt under Notification No. 12/2017-Central Tax (Rate).</p>
3	Processing or Administrative Fees	<p>Issue: Taxability of fees other than interest or discount.</p> <p>Clarification: Any processing, administrative, or service fees are taxable under GST.</p>
4	Loan Processing Between Related Entities	<p>Issue: Taxability of processing fees for loans between related entities.</p>

		Clarification: If no processing fees are charged, there is no GST. If any additional fees are charged, they are taxable.
5	No Consideration Other than Interest	Issue: When no fees are charged apart from interest. Clarification: There is no taxable supply of services, and hence no GST is applicable.
6	Consideration for Administrative Services	Issue: Taxability if additional fees are charged Clarification: Additional fees over and above interest or discount are taxable as supply of services.

Example:

1. Loan with Only Interest:

- **Scenario:** An overseas affiliate provides a loan to its Indian affiliate with only interest as consideration.
- **Clarification:** No GST is applicable on this transaction.

2. Loan with Processing Fees:

- **Scenario:** An overseas affiliate provides a loan to its Indian affiliate and charges a processing fee.
- **Clarification:** GST is applicable on the processing fee.

3. No Fees Apart from Interest:

- **Scenario:** A person provides a loan to a related person with no additional fees other than interest.
- **Clarification:** No GST is applicable as there is no taxable supply of services.

Possible Impact

1. **Increased Clarity:** Provides clear guidance on the taxability of loans between related entities.
2. **Simplified Compliance:** Ensures consistent application of GST laws across different regions and scenarios.
3. **Avoidance of Unnecessary Taxation:** Prevents unnecessary GST charges on interest-only loans.

Conclusion:

This clarification ensures that loans provided between related entities or by overseas affiliates are not taxable under GST if the only consideration is interest or discount. However, any additional fees such as processing or administrative charges are taxable under GST.

Circular No.218/12/2024-GST-dated 26-06-2024

13

Clarification on Input Tax Credit for Ducts and Manholes Used in Optical Fiber Cable Networks

The Cellular Operators Association of India (COAI) has raised concerns because some tax authorities are denying input tax credit (ITC) on ducts and manholes used in optical fiber cable (OFC) networks. These tax authorities argue that these items are considered immovable property (other than Plant and Machinery) and are therefore blocked from ITC under section 17(5) of the CGST Act, 2017.

Key Points of Clarification:

1. Relevant Law:

- Section 17(5) of the CGST Act states that ITC is not available for:
- Works contract services used for constructing immovable property (except for plant and machinery).
- Goods or services used for constructing immovable property on one's own account (again, except for plant and machinery).

2. Definition of Plant and Machinery:

- The CGST Act explains that "plant and machinery" includes equipment and machinery fixed to the earth by foundation or structural support used for making outward supplies of goods or services. It excludes land, buildings, civil structures, telecommunication towers, and pipelines laid outside factory premises.

3. Ducts and Manholes:

- These are crucial for the OFC network used in telecommunications. They house the cables and are necessary for laying, maintaining, and operating the network.
- According to the CGST Act's explanation, ducts and manholes are considered part of "plant and machinery" because they are used in providing telecommunication services.

4. Conclusion:

- Ducts and manholes are not specifically excluded from the definition of "plant and machinery" (unlike land, buildings, civil structures, telecommunication towers, and pipelines laid outside factory premises).
- Therefore, ITC is available for ducts and manholes used in OFC networks.

Action Required:

- Tax authorities are instructed to allow ITC on ducts and manholes used in OFC networks.
- Trade notices should be issued to inform the public about this clarification.
- Any difficulties in implementing this clarification should be reported to the Board.

Summary:

Ducts and manholes used in optical fiber cable networks for telecommunication services are eligible for input tax credit under the CGST Act, as they fall under the definition of "plant and machinery."

Circular No.219/13/2024-GST-dated 26-06-2024

14

Clarification on Place of Supply for Custodial Services Provided by Banks to Foreign Portfolio Investors

Some tax authorities believe that the place of supply for custodial services provided by banks to Foreign Portfolio Investors (FPIs) should be the location of the service provider (banks), as per Section 13(8)(a) of the IGST Act, 2017.

Key Points of Clarification:

1. Definition of Custodial Services:

- Custodial services include safekeeping securities, maintaining accounts, collecting benefits, informing clients about securities, and maintaining records.

2. FPIs Investment Scope:

- FPIs can invest in various securities like shares, mutual funds, derivatives, real estate investment trusts, and more.

3. Service Agreements:

- Banks provide custodial services to FPIs under custodial agreements, mainly maintaining accounts of securities.

4. Relevant Law:

- Section 13(8)(a) of the IGST Act states that the place of supply for services provided by banks to "account holders" is the location of the service provider.
- The term "account" refers to accounts that bear interest, such as savings or fixed deposits.

5. Historical Context:

- Under the Service Tax regime, custodial services were not considered services provided to account holders but were covered under other rules.

Conclusion:

- Custodial services to FPIs are not treated as services provided to "account holders" under Section 13(8)(a) of the IGST Act.
- Therefore, the place of supply should be determined under the default rule in Section 13(2) of the IGST Act, which is based on the location of the service recipient.

Action Required:

- Tax authorities are instructed to follow this clarification and issue trade notices.
- Report any difficulties in implementation to the Board.

Circular No.220/14/2024-GST-dated 26-06-2024

Questions have arisen regarding the time of supply for tax purposes on services related to the construction and maintenance of National Highway Projects under the Hybrid Annuity Mode (HAM) model, where payments are received both during construction and through deferred annuities.

Issue	Clarification
Contract Structure	Under the HAM model, concessionaires must construct new roads and provide operation and maintenance (O&M) services. Payments are staggered over the years.
Nature of Contract	A HAM contract is a single contract covering both construction and O&M services. It cannot be split into two separate contracts based on payment terms.
Continuous Supply of Services	The contract is considered a continuous supply of services because payments are made periodically and based on the completion of events specified in the contract.
Time of Supply Determination	As per Section 13(2) of the CGST Act:
If Invoice Issued on Time	Time of supply is the earlier of the date of issuance of the invoice or the date of receipt of payment.
If Invoice Not Issued on Time	Time of supply is the earlier of the date of provision of service (deemed as the due date of payment as per the contract) or the date of receipt of payment.

Invoice Requirements for Continuous Supply	As per Section 31(5) of the CGST Act, for continuous supply of services, the invoice must be issued on or before the specified date or the date of completion of the event as per the contract.
Interest Component	Any interest included in the annuity/installment payments is also taxable and must be included in the taxable value.
Tax Liability	Tax liability arises at the time of issuance of the invoice or receipt of payment, whichever is earlier, if the invoice is issued on or before the specified date. If the invoice is not issued on time, tax liability arises on the date of provision of the service (due date of payment) or receipt of payment, whichever is earlier.

Summary:

The time of supply for services under the HAM model for NHA projects is determined based on the issuance of the invoice or receipt of payment, whichever is earlier. If invoices are not issued on time, the time of supply is based on the due date of payment or receipt of payment, whichever is earlier. Additionally, any interest included in the annuity payments is also subject to tax.

Example:

1. Time of Supply in case of Issue invoice on time: -

Construction Completed on 01-06-2024.

Invoice issued: 10-06-2024

Payment received: 20-06-2024

Time of Supply: 10-06-2024 Tax liability arises on June 10, 2024 (date of invoice issuance, as it is earlier than the payment receipt date).

2. Time of Supply in case of Invoice is not issue on time:

Due date of payment as per contract: 15-06-2024

Time of Supply: 15-06-2024 Tax liability arises on June 15, 2024 (due date of payment as per the contract).

Circular No.221/15/2024-GST-dated 26-06-2024

There have been questions regarding when GST should be paid on spectrum allocation services where telecom operators opt for installment payments under the deferred payment option as per the Frequency Assignment Letter (FAL) issued by the Department of Telecommunications (DoT).

Key Points Clarifications:

Issue	Clarification
Spectrum Allocation and Payment	Telecom operators bid for the right to use spectrum offered by the government. They may choose to pay in installments as specified in the Frequency Assignment Letter (FAL) issued by DoT.
Continuous Supply of Services	The supply of spectrum usage services is considered a continuous supply of services because the service (spectrum usage) is provided continuously for a period exceeding three months with periodic payments.
Time of Supply for Forward Charge	Under Section 13(2) of the CGST Act, the time of supply for services is the earlier of the date of invoice issuance, the date of service provision, or the date of payment.
Time of Supply for Reverse Charge	Under Section 13(3) of the CGST Act, for services on which tax is paid on reverse charge basis, the time of supply is the earlier of: (a) the date of payment entry in the recipient's books or bank account, or (b) 60 days from the date of the invoice or any similar document.
Nature of Frequency Assignment Letter (FAL)	The FAL is a bid acceptance document that includes payment options and amounts. It is not considered an invoice or similar document for determining the time of supply.
Invoice Requirements for Continuous Supply	As per Section 31(5)(a) of the CGST Act, for continuous supply of services, the invoice must be issued on or before the due date of payment specified in the contract.
Payment Scenarios	Upfront Payment: GST is payable when the payment is made or due, whichever is earlier. Deferred Payment: GST is payable as and when the installment payments are due or made, whichever is earlier.

Summary:

In cases where telecom operators opt for deferred payment for spectrum usage services, the GST should be paid as per the due dates specified in the Frequency Assignment Letter. If the payment is made up front, GST is payable when the payment is made or due, whichever comes first.

Example:

Event	Scenario	Action
Full Upfront Payment	Payment made on June 1, 2024	GST payable on June 1, 2024 (date payment is made)
Deferred Payment	Installment due on June 15, 2024	GST payable on June 15, 2024 (due date of installment)
Deferred Payment	Payment made on June 20, 2024	GST payable on June 15, 2024 (due date of installment, which is earlier than the payment date)

Circular No.222/16/2024-GST-dated 26-06-2024

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