

# TAX FLASH NEWS

27 March 2020

## Update - GST Notifications and Circulars pursuant to the announcement made by the GST Council on 14 March 2020

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The GST Council in its 39<sup>th</sup> meeting held on 14 March 2020, had announced various measures primarily focusing on the IT related grievances faced by the taxpayers and amendments to the Central Goods and Services Tax Rules, 2017. Central Board of Indirect Taxes and Customs (CBIC) have issued notifications to give effect to the recommendations of the GST Council.

In addition to the above, the Council had also announced the issuance of circulars to clarify issues faced by taxpayers on the apportionment of tax credit in case of business re-organisation and issues faced by entities covered under Insolvency and Bankruptcy Code, 2016. These circulars have also been issued by CBIC.

### A. Amendments to the CGST Rules –

#### 1. GST registration procedures

- New sub-rule inserted to mandate authentication of the Aadhar number of the applicant before grant of registration
- Failure to undergo authentication of Aadhar number by the applicant, the registration shall be granted only upon physical verification of the principle place of the business.

#### 2. Apportionment of Input tax credit (ITC) on capital goods

Capital goods which were earlier used or intended to be used exclusively for non-business or for effecting exempt supplies, and are subsequently used for effecting exempt, non-business and taxable supplies, the ITC of such capital goods shall be credited to the electronic credit ledger, subject to the condition that the ineligible portion i.e. credit attributable to the period during which such goods were used/intended to be used exclusively for non-business/for effecting exempt supplies, shall be added to the output tax liability.

The ineligible portion shall be calculated separately for Central Tax, State Tax, Union Territory tax and Integrated Tax.

#### 3. Refund application in respect of zero-rated supplies

For the purpose of computing the refund amount, the value of “turnover of zero-rated supply of goods” shall be determined as under

- a. Value of zero-rated supply of goods made during the relevant period without payment of tax under a bond or letter of undertaking; or
- b. 1.5 times of the value of goods supplied domestically by the same or similarly placed supplier  
Whichever is lower.

#### 4. Recovery of refund, where export proceeds are not realised

Where a refund of any unutilised ITC or of IGST paid on export of goods has been paid, but the sales proceeds in respect of such export goods have not been realised, either in full or partially, within the time prescribed under FEMA<sup>1</sup>, including any extension of such period, the person to whom such refund has been granted, shall

- Deposit the amount so refunded along with interest, to the extent of non-realisation within a period of 30 days of the expiry of the said period
- Upon failure to deposit the refund amount within the prescribed time, the same shall be recovered along with interest

In case, after the refund amount has been recovered, the sales proceeds are realised within the extended period permitted by the Reserve Bank of India, the proper officer shall refund the amount thus recovered.

#### [Notification no. 16/2020 – Central Tax dated 23 March 2020]

#### B. Circular on apportionment of ITC during business organisation

Following clarifications have been issued with respect to apportionment of ITC during business reorganisation

Sr. No.	Issue / Question	Clarification
1	In case of demerger of entity, whether the value of assets of the new units to be considered at State level or at all-India level for the purpose of transfer of ITC	State level
2	Is the transferor required to file FORM GST ITC – 02 in all the States where it is registered	Only in those states where both transferor and transferee are registered
3	Whether the proviso to rule 41(1) of the CGST Rules, 2017 would be applicable to calculate the amount of transferable ITC in case of business reorganization other than 'demerger'?	Yes, it shall be applicable to all forms of business re-organization that results in partial transfer of business assets along with liabilities
4	Manner of applying the ratio of value of assets, in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess	It has to be applied on total amount of unutilized ITC and not for each head separately.
5	Manner of determination of ITC that is to be transferred to the transferee under each tax head i.e. IGST/CGST/SGST.	The amount to be transferred under each head shall be at the liberty of the transferor subject to maximum ITC available for transfer.
6	Relevant date for calculating the amount of unutilized ITC balance to be transferred	The relevant date for this purpose is the date of filing FORM GST ITC – 02 by the transferor.
7	Relevant date to calculate the ratio of value of assets	The relevant date would be "Appointed date of demerger" as defined in Section 232(6) of the Companies Act 2013.

#### [Circular no. 133 03/2020-GST dated 23 March 2020]

<sup>1</sup> Foreign Exchange Management Act, 1999

### **C. Circular on issues being faced by entities covered under Insolvency and Bankruptcy Code, 2016**

CBIC have also issued a detailed circular elaborating the manner in which various compliances viz. obtaining registration as a distinct person, filing of returns, tax payments, claiming of ITC, etc. under the GST law shall be required to be carried out by entities covered under the Insolvency and Bankruptcy Code, 2016.

**[Circular no. 134/04/2020-GST dated 23 March 2020]**

#### **Our comments**

One of the major amendments in the CGST Rules is with respect to the restriction imposed in determining the value of turnover of zero-rated supply of goods. As per the amended provision, the value of zero-rated supplies is restricted to 1.5 times of the domestically supplied goods either by the exporter themselves or by other similarly placed supplier. The value adopted by the “similarly placed supplier” prima facie seems to be provided only when the exporter is not having any domestic supply of goods, the requirement is prone to litigation on two counts, i.e. when the value of the similarly placed supplier would be required to be provided and manner of identifying ‘similarly placed supplier’. We hope that Government provide some clarification on this or else it would impact genuine exporters.

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### Ahmedabad

Commerce House V, 9th Floor,  
902, Near Vodafone House, Corporate  
Road,  
Pralhad Nagar,  
Ahmedabad – 380 051.  
Tel: +91 79 4040 2200

### Bengaluru

Embassy Golf Links Business Park,  
Pebble Beach, 'B' Block,  
1st & 2nd Floor,  
Off Intermediate Ring Road, Bengaluru –  
560071  
Tel: +91 80 6833 5000

### Chandigarh

SCO 22-23 (1st Floor),  
Sector 8C, Madhya Marg,  
Chandigarh – 160 009.  
Tel: +91 172 664 4000

### Chennai

KRM Towers, Ground Floor,  
1, 2 & 3 Floor, Harrington Road,  
Chetpet, Chennai – 600 031.  
Tel: +91 44 3914 5000

### Gurugram

Building No.10, 8th Floor,  
DLF Cyber City, Phase II,  
Gurugram, Haryana – 122 002.  
Tel: +91 124 307 4000

### Hyderabad

Salarpuria Knowledge City,  
6th Floor, Unit 3, Phase III,  
Sy No. 83/1, Plot No 2,  
Serilingampally Mandal,  
Ranga Reddy District,  
Hyderabad – 500 081.  
Tel: +91 40 6111 6000

### Jaipur

Regus Radiant Centre Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road,  
Jaipur – 302 018.  
Tel: +91 141 - 7103224

### Kochi

Syama Business Centre,  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682 019.  
Tel: +91 484 302 5600

### Kolkata

Unit No. 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091.  
Tel: +91 33 4403 4000

### Mumbai

1st Floor, Lodha Excelus,  
Apollo Mills,  
N. M. Joshi Marg,  
Mahalaxmi,  
Mumbai – 400 011.  
Tel: +91 22 3989 6000

### Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park,  
Tower-A, Plot# 7, Sector 142,  
Expressway Noida,  
Gautam Budh Nagar,  
Noida – 201 305.  
Tel: +91 0120 386 8000

### Pune

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex,  
Mundhwa Road, Ghorpadi,  
Pune – 411 001.  
Tel: +91 20 6747 7000

### Vadodara

Ocean Building, 303, 3rd Floor,  
Beside Center Square Mall,  
Opp. Vadodara Central Mall,  
Dr. Vikram Sarabhai Marg,  
Vadodara – 390 023.  
Tel: +91 265 619 4200

### Vijayawada

Door No. 54-15-18E,  
Sai Odyssey,  
Gurunanak Nagar Road, NH 5,  
Opp. Executive Club, Vijayawada,  
Krishna District,  
Andhra Pradesh – 520 008.  
Tel: +91 0866 669 1000

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