

25<sup>th</sup> March 2018

## GST UPDATE - 4/2018

### **GST Portal Update**

**Advisory for change in taxpayer type from SEZ to Regular or Regular to SEZ.**

1. Migrated taxpayers who have inadvertently selected themselves as SEZ, can send their requests to become Non-SEZ on the email: [reset.sezflag@gst.gov.in](mailto:reset.sezflag@gst.gov.in).
2. Taxpayers who have not migrated as SEZ, can send their requests to become SEZ on the email : [reset.sezflag@gst.gov.in](mailto:reset.sezflag@gst.gov.in). Please attach scanned copy of LOA for obtaining registration as SEZ /SEZ developer units.

### **Notifications under GST**

Gist of all notifications issued from **29.01.2018 to 24.03.2018**

**Tax (CGST & IGST) Notifications:**

Notification 11/2018 – Central Tax Dated 02.02.2018	No.	Postponed E-Way bill to date yet to be notified
Notification 12/2018 – Central Tax Dated 07.03.2018	No.	<p>Central Goods and Services Tax (Second Amendment) Rules, 2018</p> <p>Due date for GST TRAN 2 fixed as 31.03.2018</p> <p>E-Way bill Rules Revised</p> <ul style="list-style-type: none"> <li>• <b>Regarding Job Work</b> - Where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill</li> </ul>

shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment.

- **Value** - Value of Goods as per Invoice + GST charged - Value of Exempted Goods to be considered for Consignment Value of Rs. 50,000
- **Transport of Goods by Rail** - where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.
- **When Transporter details of E-Way Bill NOT required** - Where the goods are transported for a distance of upto ~~10~~ **50** kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.
- **Transporter mandated to generate E-Way Bill** - Where the consignor or the consignee has not generated the e-way bill and the aggregate of the consignment value of goods carried in the conveyance is > Rs. 50,000, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill.

• **Validity of E-Way bill**

Distance	Validity Period
Upto 100 Kms	1 Day in cases other than Over Dimensional Cargo
For every 100 km. or part thereof thereafter	1 additional in cases other than Over Dimensional Cargo
Upto 20 Kms	1 day in case of Over Dimensional Cargo
For every 20 km. or part thereof thereafter	1 additional day in case of Over Dimensional Cargo

• **Situations where E-Way bill not required – Additions made vide this notification**

➔ Where the goods are being transported—

✧ under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

✧ under customs supervision or under customs seal

➔ Where the goods being transported are transit cargo from or to Nepal or Bhutan

➔ Where the goods being transported are exempt from tax under notification No. 7/2017-Central Tax (Rate), dated 28.06.2017 - Supplies by CSD to Unit Run Canteens and

		<p>supplies by CSD and notification No. 26/2017- Central Tax (Rate), dated the 21.09.2017 – Supplies of Heavy Water &amp; Nuclear Fuels by Dept of Atomic Energy to Nuclear Power Corp</p> <ul style="list-style-type: none"> <li>➔ Any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee</li> <li>➔ Where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail</li> <li>➔ Where empty cargo containers are being transported</li> <li>➔ Where the goods are being transported upto a distance of 20 kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan.</li> </ul>						
Notification No. 13/2018 – Central Tax Dated 07.03.2018		Rescinded Notification No. 6/2018 Central Tax dated 23.01.2018 - Reduction in Late fee for GSTR 5A rescinded						
Notification No. 14/2018 – Central Tax Dated 23.03.2018		<p><b>CGST (3rd Amendment) Rules 2018</b></p> <ul style="list-style-type: none"> <li>➔ Delivery challan can be used even in situations where goods are sent from one job worker to another job worker</li> <li>➔ Anti-Profiteering authority</li> </ul> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 30%;">Rule</th> <th style="width: 30%;">Before Amendment</th> <th style="width: 40%;">After Amendment</th> </tr> </thead> <tbody> <tr> <td>125</td> <td>The Additional</td> <td>An officer not below</td> </tr> </tbody> </table>	Rule	Before Amendment	After Amendment	125	The Additional	An officer not below
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		Director General of Safeguards under the Board shall be the Secretary to the Authority	the rank of Additional Commissioner (working in the Directorate General of Safeguards) shall be the Secretary to the Authority
	Explanation after Rule 137	Who can apply for anti-profiteering? a) Suppliers of goods or services under the proceedings; b) Recipients of goods or services under the proceedings	New addition (c) any other person alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices
Notification No. 15/2018 – Central Tax Dated 23.03.2018		Seeks to appoint 01.04.2018 as date from which E-Way bill rules will be applicable except Clause (7) which mandated transporters to generate way bill in absence of way bill by Supplier or recipient	
Notification No. 16/2018 – Central Tax		Extends GSTR 2B for another 3 months	

Dated 23.03.2018	Month	Due Date	
	April 2018	20.05.2018	
	May 2018	20.06.2018	
	June 2018	20.07.2018	

### Tax (Rate) Notifications

Notification No. 10/2018 – Central Tax (Rate) & 11/2018 – Integrated Tax (Rate) Dated 23.03.2018	Suspension of Section 9(4) of CGST Act 2017 and 5(4) of IGST Act 2017 extended upto <b><u>30.06.2018</u></b>
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### Circulars under GST

Circular No. 33/07/2018- GST dated 23.02.2018	<p><b>Directions under Section 168 of the CGST Act regarding non-transition of CENVAT credit under section 140 of CGST Act or non-utilization thereof in certain cases</b></p> <ul style="list-style-type: none"> <li>➤ <b>Disputed Credit</b> - When the last order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in operation, if the said disputed credit is utilised, it shall be recovered from the tax payer, with interest and penalty</li> <li>➤ <b>Blocked Credit</b> - If the blocked credit as per Section 17(5) of CGST Act 2017 has been carried forward and credited to the electronic credit ledger in contravention of section 140 of the Act, it shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, and shall be recovered from the tax payer with interest and penalty</li> <li>➤ <b>Undertaking to be submitted</b> - In cases where the disputed credit</li> </ul>
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	<p>or blocked credit is &gt; Rs. 10 lakhs, the taxpayers shall submit an undertaking to the jurisdictional officer of the Central Government that such credit shall not be utilized or has not been availed as transitional credit.</p>							
<p>Circular No. 32/06/2018-GST dated 12.02.2018</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center;">Issue</th> <th style="width: 50%; text-align: center;">Clarification</th> </tr> </thead> <tbody> <tr> <td data-bbox="416 618 938 1294"> <p>What is the GST rate applicable on rental services of self-propelled access equipment (Boom Scissors/ Telehandlers)?</p> </td> <td data-bbox="938 618 1465 1294"> <p>Leasing or rental services, with or without operator, for any purpose are taxed at the same rate of GST as applicable on supply of like goods involving transfer of title in goods. Thus, the GST rate for the rental services in the given case shall be 28%, provided the said goods attract GST of 28%.</p> </td> </tr> <tr> <td data-bbox="416 1294 938 1966"> <p>Is GST leviable in following cases: (1) Hospitals hire senior doctors/Consultants/technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer-employee relationship. Will</p> </td> <td data-bbox="938 1294 1465 1966"> <p>(1) Services provided by senior doctors/consultants/technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt. (2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for</p> </td> </tr> </tbody> </table>		Issue	Clarification	<p>What is the GST rate applicable on rental services of self-propelled access equipment (Boom Scissors/ Telehandlers)?</p>	<p>Leasing or rental services, with or without operator, for any purpose are taxed at the same rate of GST as applicable on supply of like goods involving transfer of title in goods. Thus, the GST rate for the rental services in the given case shall be 28%, provided the said goods attract GST of 28%.</p>	<p>Is GST leviable in following cases: (1) Hospitals hire senior doctors/Consultants/technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer-employee relationship. Will</p>	<p>(1) Services provided by senior doctors/consultants/technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt. (2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for</p>
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	<p>such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?</p> <p>(2) <b>Retention money:</b> Hospitals charge the patients, say, Rs.10000/- and pay to the consultants/ technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?</p> <p>(3) <b>Food supplied to the patients</b></p>	<p>illness, injury, deformity, abnormality</p> <p>or pregnancy in any recognized system of medicines in India. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.</p> <p>(3) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.</p>



Circular No.	Issue	Clarification
34/8/2018- GST dated 01.03.2018	Whether activity of <b>bus body building</b> , is a supply of goods or services?	In the case of bus body building there is supply of goods and services. Thus, classification of this <b>composite supply</b> , as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.
	Whether <b>retreading of tyres</b> is a supply of goods or services?	In retreading of tyres, which is a <b>composite supply</b> , the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply.  Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded

		tyres, is a supply of goods
	Whether <b>Priority Sector Lending Certificates (PSLCs)</b> are outside the purview of GST and therefore not taxable?	<p>PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT.</p> <p>In GST there is <b>no exemption to trading in PSLCs</b>. Thus, PSLCs are taxable as goods at standard rate of 18%</p>
	<p>(1) Whether the <b>activities carried by DISCOMS</b> against recovery of charges from consumers under State Electricity Act are exempt from GST?</p> <p>(2) Whether the guarantee provided by State Government to state owned companies against guarantee commission, is taxable under GST?</p>	<p>Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST. The other services such as, -</p> <ul style="list-style-type: none"> <li>i. Application fee for releasing connection of electricity;</li> <li>ii. Rental Charges against metering equipment;</li> <li>iii. Testing fee for meters/ transformers, capacitors etc.;</li> <li>iv. Labour charges from customers for shifting of meters or shifting of service lines;</li> <li>v. charges for duplicate bill;</li> </ul> <p>provided by DISCOMS to consumer are <b>taxable</b>.</p>

	<p>(2) The service provided by Central Government/State Government to any business entity including PSUs by way of guaranteeing the loans taken by them from financial institutions against consideration in any form including Guarantee Commission is taxable.</p>
<p>Circular No. 35/9/2018-GST</p>	<p><b>Joint Venture ---taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV</b></p> <p>Whether cash calls are taxable or not will entirely depend on the facts and circumstances of each case. 'Cash calls' are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget.</p> <p><b>Illustration A:</b> There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member purchases machinery for Rs 400 for the JV to be used in oil production.</p> <p>This will not be the subject matter of 'ST/GST' for the reason that the operating member is not carrying out an activity for another for consideration. Here, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.</p>

	<p><b>Illustration B:</b> There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.</p> <p>the operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.</p>
<p>Circular No. 37/11/2018-GST dated 15.03.2018</p>	<p><b>Clarifications on exports related refund issues</b></p> <p><b><u>Availing Drawback</u></b> - A supplier availing of drawback only with respect to basic customs duty shall be eligible for refund of unutilized input tax credit of GST / compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier of goods or services or both has availed of drawback in respect of central tax.</p> <p><b><u>Amendment through Table 9 of GSTR-1</u></b> - If a taxpayer has committed an error while entering the details of an invoice / shipping bill / bill of export in Table 6A or Table 6B of FORM GSTR-1, he can rectify the same in Table 9 of FORM GSTR-1. It is advised that while processing refund claims on account of zero rated supplies, information contained in Table 9 of FORM GSTR-1 of the subsequent tax periods should be taken into cognizance, wherever applicable.</p> <p><b><u>Exports without LUT</u></b> - It is emphasised that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The</p>

delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

**Exports after specified period** - Rule 96A (1) of the CGST Rules provides that any registered person may export goods or services without payment of integrated tax after furnishing a LUT / bond and that he would be liable to pay the tax due along with the interest as applicable within a period of 15 days after the expiry of 3 months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India. The time period in case of services is 15 days after the expiry of 1 year or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

In this regard, it is emphasised that exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of 3 months, payment of integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

**Self-declaration for non-prosecution** - It is learnt that some field formations are asking for a self-declaration with every refund claim to the effect that the claimant has not been prosecuted. It is clarified

that this requirement is already satisfied in case of exports under LUT and asking for self-declaration with every refund claim where the exports have been made under LUT is not warranted.

**Refund of transitional credit** - It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be claimed as refund.

**Discrepancy between values of GST invoice and shipping bill/bill of export** - During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be sanctioned as refund

**Filing frequency of Refunds** - it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

**BRC / FIRC for export of goods** - It is clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

**Requirement of invoices for processing of claims for refund** - as the refund claims are being filed by the recipient in a semi-electronic environment and is completely based on the information provided by them, it is necessary that invoices are scrutinized.

A list of documents required for processing the various categories of refund claims on Exports	
Type of Refund	Documents
Export of Services with payment of tax (Refund of IGST paid on export of services)	<ul style="list-style-type: none"> <li>• Copy of FORM RFD-01A filed on common portal</li> <li>• Copy of Statement 2 of FORM RFD-01A</li> <li>• Invoices w.r.t. input, input services and capital goods</li> <li>• BRC/FIRC for export of services</li> <li>• Undertaking / Declaration in FORM RFD-01A</li> </ul>
Export (goods or services) without payment of tax (Refund of accumulated ITC of IGST / CGST / SGST / UTGST / Cess)	<ul style="list-style-type: none"> <li>• Copy of FORM RFD-01A filed on common portal</li> <li>• Copy of Statement 3A of FORM RFD-01A generated on common portal</li> <li>• Copy of Statement 3 of FORM RFD-01A</li> <li>• Invoices w.r.t. input and input services</li> <li>• BRC/FIRC for export of services</li> <li>• Undertaking / Declaration in FORM RFD-01A</li> </ul>

For any further clarifications on the subject, feel free to write us @ [bcoakp@gmail.com](mailto:bcoakp@gmail.com).