INDIRECT TAX (PAPER 7B) [01-06-2023 TO 30-11-2023]

Amendment by the Finance Act 2023

Following amendment has been made by the Finance Act 2023:

S.N.	Amendment	Clause of the Finance Act, 2023	Applicable from
Amendment in CGST Act			
1.	Clause (d) of sec. 10(2) and Clause (c) of sec. 10(2A) of the CGST Act [relating to composition levy] is being amended so as to remove the restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy.	137	01-10-2023
2.	Second and third provisos to sec. 16(2) of the CGST Act are being amended to align the said provision with the return filing system provided in the Act	138	01-10-2023
3.	Explanation to sec. 17(3) of the CGST Act is being amended so as to restrict availment of input tax credit in respect of certain transactions specified in para 8(a) of Schedule III of the Act, as may be prescribed, by including the value of such transactions in the value of exempt supply. Further, sec. 17(5) is also being amended so as to provide that input tax credit shall not be available in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in sec. 135 of the Companies Act, 2013.	139	01-10-2023
4.	Sec. 23 has been amended so as to provide that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act. The said amendment is applicable from 01-07-2017	140	01-10-2023
5.	Sec. 30(1) relating to revocation of cancellation of registration has been amended so as to provide that a person may apply for revocation of cancellation of registration in such manner, within such time and subject to such conditions and restrictions, as may be prescribed Earlier, such application is required to be made within 30 days of service of cancellation order. Further, proviso to sec. 30(1) has been omitted.	141	01-10-2023

6.	A new sub-section (5) in sec. 37 of the CGST Act has been inserted so as to provide a time limit [3 years from the due date of furnishing such details] upto which the details of outward supplies [GSTR 1] under sub-section (1) for a tax period can be furnished by a registered person. Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons. Similar amendment has also been made in - sec. 39 [GSTR 3B] - sec. 44 [Annual Return] - sec. 52 [TCS]	142 / 143 / 144 / 145	01-10-2023
Amendment in IGST Act			
7.	Sec. 2(16) of the IGST Act is being amended so as to revise the definition of "non-taxable online recipient" by removing the condition of receipt of online information and database access or retrieval services (OIDAR) for purposes other than commerce, industry or any other business or profession so as to provide for taxability of OIDAR service provided by any person located in nontaxable territory to an unregistered person receiving the said services and located in the taxable territory. Further, it also seeks to clarify that the persons registered solely in terms of sec. 24(vi) of CGST Act shall be treated as unregistered person for the purpose of the said clause. Also, sec. 2(17) of the said section is being amended to revise the definition of "online information and database access or retrieval services" to remove the condition of rendering of the said supply being essentially automated and involving minimal human intervention.	160	01-10-2023
8.	Proviso to sec. 12(8) of the IGST Act is being omitted so as to specify the place of supply, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.	161	01-10-2023
9.	Sec. 13(9) has been omitted	162	01-10-2023

Zero rated Supply [Sec. 16 of the IGST Act]

Sec. 16 of the IGST Act provides the provision relating to zero rated supply. Sec. 16(1) defines the term zero rated supply as under:

"zero rated supply" means any of the following supplies of goods or services or both, namely: -

a. export of goods or services or both; or
b. supply of goods or services or both *for authorised operations* to a Special Economic Zone developer or a Special Economic Zone unit.

The underlined words have been inserted by the Finance Act 2021 w.e.f. the date to be notified. Now vide Notification No. 27/2023–Central Tax dated 31-07-2023, the Central Government hereby appoints 01-10-2023 as the date from which aforesaid amendment will be applicable.

Further, sec.16(3) has been substituted by the following provision by the Finance Act 2021 which shall be effective from 01-10-2023:

"(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of sec. 54 of the CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.

However, the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest u/s 50 of the CGST Act within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify:

i. a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

ii. a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

Waiver of the requirement of mandatory registration u/s 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions [Notification No.34/2023-CT dated 31-07-2023]

W.e.f. 01-10-2023, Subject to following condition, a person making supplies of goods through an electronic commerce operator (who is required to collect tax at source u/s 52) and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the threshold limit of above which a supplier is liable to be registered in the State or Union territory in accordance with the provisions of sec. 22(1) shall be exempted from obtaining registration under the said Act:

i. such persons shall not make any inter-State supply of goods;
ii. such persons shall not make supply of goods through electronic commerce operator in more than one State or Union territory;
iii. such persons shall be required to have a Permanent Account Number issued under the Income Tax Act, 1961;
iv. such persons shall, before making any supply of goods through electronic commerce operator, declare on the common portal their Permanent Account Number issued under the Income Tax Act, 1961, address of their place of business and the State or Union territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;
v. such persons have been granted an enrolment number on the common portal on successful validation of the Permanent Account Number declared as per clause (iv);
vi. such persons shall not be granted more than one enrolment number in a State or Union territory;
vii. no supply of goods shall be made by such persons through electronic commerce operator unless such persons have been granted an enrolment number on the common portal; and
viii. where such persons are subsequently granted registration u/s 25, the enrolment number shall cease to be valid from the effective date of registration.

Special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons [Notification No. 37/2023 dated 04-08-2023]

W.e.f. 01-10-2023, the electronic commerce operator who is required to collect tax at source u/s 52 notified as the class of persons who shall follow the following special procedure in respect of supply of goods made through it by the persons exempted from obtaining registration (hereinafter referred to as the said person) in accordance with the notification issued u/s 23(2) vide notification number 34/2023- Central Tax, dated 31-07-2023 namely:

i. the electronic commerce operator shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;
ii. the electronic commerce operator shall not allow any inter-State supply of goods through it by the said person;
iii. the electronic commerce operator shall not collect tax at source u/s 52(1) in respect of supply of goods made through it by the said person; and
iv. the electronic commerce operator shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

However, where multiple electronic commerce operators are involved in a single supply of goods through electronic commerce operator platform, "the electronic commerce operator" shall mean the electronic commerce operator who finally releases the payment to the said person for the said supply made by the said person through him.

Special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers [Notification No. 36/2023 dated 04-08-2023]

W.e.f. 01-10-2023, the electronic commerce operator who is required to collect tax at source u/s 52 are notified as the class of persons who shall follow the following special procedure in respect of supply of goods made through it by the persons paying tax u/s 10 [i.e., composition levy] namely:

i. the electronic commerce operator shall not allow any inter-State supply of goods through it by the said person;
ii. the electronic commerce operator shall collect tax at source u/s 52(1) in respect of supply of goods made through it by the said person and pay to the Government as per provisions of sec. 52(3); and
iii. the electronic commerce operator shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

Amendment in CGST Rules [Notification No. 38/2023 dated 04-08-2023]

Rule 9 relating to verification of the registration application and approval thereof provides registration shall be granted within 30 days of submission of application, after physical verification of the place of business *in the presence of the said person.* The rule has been amended so as to delete the phrase "in the presence of the said person".

Rule 10A relating furnishing of bank account details has been amended so as provide that within a period of 30 days from the date of grant of registration, or before furnishing the details of outward supplies of goods or services or both u/s 37 in FORM GSTR-1 or using invoice furnishing facility, whichever is earlier, furnish information with respect to details of bank account on the common portal.

Rule 21A(2A) relating to suspension of registration has been substituted:

a. a comparison of the returns furnished by a registered person u/s 39 with the details of outward supplies furnished in FORM GSTR-1 or the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1, or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, or
b. there is a contravention of the provisions of rule 10A by the registered person, the registration of such person shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences, anomalies or non-compliances and asking him to explain, within a period of 30 days, as to why his registration shall not be cancelled

Further, in sub rule (4) of rule 21Afollowing proviso has been inserted:
Provided also that where the registration has been suspended under sub-rule (2A) for contravention of provisions of rule 10A and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon compliance with the provisions of rule 10A

W.e.f. 01-10-2023, rule 23 relating to revocation of cancellation of registration has been amended so as to provide that a registered person, whose registration is cancelled by the proper officer on his own motion, may subject to the provisions of rule 10B submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of 90 days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner. However, such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding 180 days.

Rule 25 relating to physical verification of business premises in certain cases has been substituted so as to provide that Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of 15 working days following the date of such verification. Further, where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to rule 9(1), the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal at least 5 working days prior to the completion of the time period specified in the said proviso.

Rule 43 relating to manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases has been amended so as to:

a. Omit clause (c) of Explanation 1 to rule 43(5)
b. To insert Explanation 3 w.e.f. 01-10-2023 to provide that for the purpose of rule 42 and this rule, the value of activities or transactions mentioned in para 8(a) of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to sec. 17(3) of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.

Proviso to Rule 46(f) relating to tax invoice has been amended so as to provide that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the state of the recipient and the same shall be deemed to be the address on record of the recipient

In rule 59(6) relating to form and manner of furnishing details of outward supplies following clauses are inserted:

e. a registered person, to whom an intimation has been issued on the common portal under the provisions of rule 88D(1) in respect of a tax period or periods, shall not be allowed to furnish the details of outward supplies of goods or services or both u/s 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either paid the amount equal to the excess input tax credit as specified in the said intimation or has furnished a reply explaining the reasons in respect of the amount of excess input tax credit that still remains to be paid, as required under the provisions of rule 88D(2);
f. a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both u/s 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the details of the bank account as per the provisions of rule 10A

Rule 67(2) relating to form and manner of submission of statement of supplies through an e-commerce operator has been amended so as to provide that the details of tax collected at source u/s 52(1) furnished by the operator under rule 67(1) shall be made available electronically to each of the registered suppliers on the common portal after filing of FORM GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

Rule 88D [Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return] has been inserted so as to provide that

1. Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in FORM GSTR-3B exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in FORM GSTR-2B in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01C, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

a. pay an amount equal to the excess input tax credit availed in the said FORM GSTR-3B, along with interest payable u/s 50, through FORM GST DRC-03, or
b. explain the reasons for the aforesaid difference in input tax credit on the common portal, within a period of seven days.

2. The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in the said sub-rule, either,
   a. pay an amount equal to the excess input tax credit, as specified in Part A of FORM GST DRC-01C, fully or partially, along with interest payable u/s 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01C, electronically on the common portal, or
   b. furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess input tax credit that has still remained to be paid, if any, in Part B of FORM GST DRC-01C,

   within the period specified in the said sub-rule.
3. Where any amount specified in the intimation referred to in sub-rule (1) remains to be paid within the period specified in the said sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of sec. 73 or sec. 74, as the case may be.

Rule 138F [Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof] has been inserted so as to provide that:

1. Where
   a) a Commissioner of State tax or Union territory tax mandates furnishing of information regarding intra-State movement of goods specified against serial numbers 4 and 5 in the Annexure appended to rule 138(14), in accordance with rule 138F(1) of the State or Union territory Goods and Services Tax Rules, and
   b) the consignment value of such goods exceeds such amount, not below ₹ 2 lakhs, as may be notified by the Commissioner of State tax or Union territory tax, in consultation with the jurisdictional Principal Chief Commissioner or Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorised by him,

   notwithstanding anything contained in Rule 138, every registered person who causes intra-State movement of such goods,
   i. in relation to a supply; or
   ii. for reasons other than supply; or
   iii. due to inward supply from an un-registered person,

   shall, before the commencement of such movement within that State or Union territory, furnish information relating to such goods electronically, as specified in Part A of FORM GST EWB-01, against which a unique number shall be generated:

However, where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

2. The information as specified in PART B of FORM GST EWB-01 shall not be required to be furnished in respect of movement of goods referred to in the sub-rule (1) and after furnishing information in Part-A of FORM GST EWB-01 as specified in sub-rule (1), the e-way bill shall be generated in FORM GST EWB-01, electronically on the common portal.
3. The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1.
4. Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-waybill, the e-way bill may be cancelled, electronically on the common portal, within twenty-four hours of generation of the e-way bill: Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.
5. Notwithstanding anything contained in this rule, no e-way bill is required to be generated-
   (a) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs; (b) where the goods are being transported-
   (i) 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
   (ii) under customs supervision or under customs seal.
6. The provisions of sub-rule (10), sub-rule (11) and sub-rule (12) of rule 138, rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, mutatis mutandis, apply to an e-way bill generated under this rule.

Explanation.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State tax or Union territory tax charged in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Value of supply in case of online gaming including online money gaming [Rule 31B] [Notification No. 51/2023 dated 29-09-2023 w.e.f. 01-10-2023]

The value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player.

However, any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

Value of supply of actionable claims in case of casino [Rule 31C] [Notification No. 51/2023 dated 29-09-2023 w.e.f. 01-10-2023]

The value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

i. purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or
ii. participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.

However, any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

Taxpoint:

- For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.
- Online gaming means offering of a game on the internet or an electronic network and includes online money gaming [Sec. 2(80A)]
- Online money gaming means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force [Sec. 2(80B)]
- Specified actionable claim means the actionable claim involved in or by way of—
  i. betting;
  ii. casinos;
  iii. gambling;
  iv. horse racing;
  v. lottery; or
  vi. online money gaming – [Sec. 2(102A)]
- Sec. 24 provides certain categories of persons are required to get registration compulsory. Sec. 24 has been amended so as to include every person supplying online money gaming from

a place outside India to a person in India in the list of categories of persons for which registration is compulsory.

- Schedule III provides a negative list. Paragraph 6 of that schedule includes actionable claims, other than lottery, betting and gambling in the negative list. Now the said para has been amended and provides that actionable claim other than specified actionable claim shall be considered in the negative list.
- As per sec. 15(5), the value of notified supplies shall be determined in such manner as may be prescribed. Vide Notification No. 49/2023 dated 29-09-2023, following supply shall be notified for the purpose of sec. 15(5):
  i. supply of online money gaming;
  ii. supply of online gaming, other than online money gaming; and
  iii. supply of actionable claims in casinos
- Benefit of Notification no. 66/2017-CT dated 15-11-2017 is not available to the registered person making supply of specified actionable claims.
- Sec. 2(105)] provides the meaning of supplier as in relation to any goods or services or both, supplier mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. In the said definition, following proviso has been inserted:

  Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.

Clarifications regarding applicability of GST on certain services [Circular No.206/18/2023-GST dated 31-10-2023]

Based on the recommendations of the GST Council in its 52nd meeting held on 07-10-2023, clarification, with reference to GST levy, related to the following issues are being issued through this circular.

i. Whether ‘same line of business’ in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators.
ii. Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.
iii. Whether job work for processing of “Barley” into “Malted Barley” attracts GST @ 5% as applicable to "job work in relation to food and food products” or 18% as applicable on “job work in relation to manufacture of alcoholic liquor for human consumption”.

iv. Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

v. Whether supply of pure services and composite supplies by way of horticulture / horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators?

Services of transport of passengers by any motor vehicle (SAC 9964) and renting of motor vehicle designed to carry passengers with operator (SAC 9966), where the cost of fuel is included in the consideration charged from the service recipient attract GST at the rate of 5% with input tax credit of services in the same line of business.

Same line of business as stated in the notification No. 11/2017-Central Tax (Rate) means "service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle".

It is hereby clarified that input services in the same line of business include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (SAC 9973) which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.

Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.

Doubts were raised on the applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc., to their lessees or occupants.

It is clarified that whenever electricity is being supplied bundled with renting of immovable property and / or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and /or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

Whether job work for processing of "Barley" into "Malted Barley" attracts GST@5% as applicable to "job work in relation to food and food products" or 18% as applicable on "job work in relation to manufacture of alcoholic liquor for human consumption".

References have been received to clarify whether services by way of job work for conversion of barley into malt attracts GST at 5% prescribed for "job work in relation to all food and food products falling under Chapter 1 to 22 of the customs tariff" or at the rate of 18% prescribed for "services by way of job work in relation to manufacture of alcoholic liquor for human consumption".

Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products and also used for manufacture of beer and alcoholic liquor for human consumption. However, irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.

It is hereby clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) which covers "job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff" irrespective of the end use of that malt and attracts 5% GST.

Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

These activities are similar to activities that are enlisted in Eleventh Schedule and Twelfth Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.

Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

Whether supply of pure services and composite supplies by way of horticulture / horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.

Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.

Sr. No. 3 and 3A of notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, that are provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture / horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017

Clarification regarding GST rate on imitation zari thread or yarn based on the recommendation of the GST Council in its 52nd meeting held on 07-10-2023 [Circular No.205/17/2023-GST dated 31-10-2023]

The GST Council in its 50th meeting had recommended reduction of GST rate to 5% on imitation zari thread or yarn known by any name in trade parlance, following which Sl. No. 218AA had been inserted in Schedule I of notification no. 1/2017-Central Tax (Rate) dated 28.6.2017.

Doubts have been raised whether metal coated plastic film converted to metallised yarn and twisted with nylon, cotton, polyester or any other yarn to make imitation zari thread is covered under Sl No. 218AA of Schedule I covering imitation zari thread or yarn, and attracting

5% GST, or under Sl No. 137 of Schedule II covering other metallised yarn attracting12% GST. As per HS Explanatory Notes, the heading 5605 covers – (1) yarn consisting of any textile material (including monofilament, strip and the like and paper yarn) combined with metal thread or strip, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present (2) yarn of any textile material(including monofilament , strip and the like and paper yarn) covered with metal by any other process including yarn covered with metal by electro-deposition. The heading also covers products consisting of a core of metal foil (generally of aluminum) or of a core of plastic film coated with metal dust, sandwiched by means of an adhesive between two layers of plastic film.

In light of the above, the GST Council has recommended to clarify that imitation zari thread or yarn made from metallised polyester film / plastic film falling under HS 5605 are covered by Sl No. 218AA of Schedule I attracting 5% GST. The GST Council has also recommended that no refund will be permitted on polyester film (metallised) / plastic film on account of inversion of tax rate.

Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST [Circular No.204/16/2023-GST dated 27-10-2023]

Representations have been received from the trade and field formations seeking clarification on certain issues with respect to taxability of activity of providing personal bank guarantee by Directors to banks for securing credit facilities for the company. Similarly, clarifications are being sought with respect to taxability and valuation of the activity of providing corporate guarantee by a related person to banks/financial institutions for another related person, as well as by a holding company in order to secure credit facilities for its subsidiary company.

In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, hereby clarifies the issues as under

S.N.	Issue	Clarification
1.	Whether the activity of providing personal guarantee by the Director of a company to the bank / financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of	As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per sec. 7(1)(c) of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing personal guarantee by the Director to the banks / financial institutions for securing credit

	service or not and whether the same will attract GST or not.	facilities for their companies is to be treated as a supply of service, even when made without consideration. Rule 28 of Central Goods and Services Tax Rules, 2017 prescribes the method for determining the value of the supply of goods or services or both between related parties, other than where the supply is made through an agent. In terms of Rule 28 of CGST Rules, the taxable value of such supply of service shall be the open market value of such supply. RBI has provided guidelines for obtaining personal guarantee of promoters, directors and other managerial personnel of the borrowing concerns vide Para 2.2.9 of its Circular No. RBI/2021-22/121 dated 09-11-2021, which is reproduced below: ***"2.2.9 Guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns*** *Banks should take personal guarantees of promoters, directors, other managerial personnel or major shareholders for the credit facilities granted to corporates, public or private, only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course. In order to identify the circumstances under which the guarantee may or may not be considered necessary, banks should be guided by the following broad considerations:* ..... ***C. Worth of the guarantors, payment of guarantee commission, etc*** *Where personal guarantees of directors are warranted, they should bear reasonable proportion to the estimated worth of the person. The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. Banks should obtain an undertaking from the borrowing company as well as the guarantors that no consideration whether*

		by way of commission, brokerage fees or any other form, would be paid by the former or received by the latter, directly or indirectly. This requirement should be incorporated in the bank's terms and conditions for sanctioning of credit limits. During the periodic inspections, the bank's inspectors should verify that this stipulation has been complied with. There may, however, be exceptional cases where payment of remuneration may be permitted e.g. where assisted concerns are not doing well and the existing guarantors are no longer connected with the management but continuance of their guarantees is considered essential because the new management's guarantee is either not available or is found inadequate. *.....”* Accordingly, as per mandate provided by RBI in terms of Para 2.2.9 (C) of RBI’s Circular No. RBI/2021-22/121 dated 09-11-2021, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. As such, when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, as per RBI mandate, there is no question of such supply/ transaction having any open market value. Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company. There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing

		directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.
2.	Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services	Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration. Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act. In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value will be determined as per rule 28 of CGST Rules. Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and easeof implementation, rule 28(2) has been inserted vide Notification No. 52/2023 dated 26-10-2023, for determining the taxable value of such

		supply of services between related persons in respect of providing corporate guarantee. Accordingly, consequent to insertion of the said sub-rule in rule 28 of CGST Rules, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of rule 28(2), irrespective of whether full ITC is available to the recipient of services or not. It is clarified that rule 28(2) shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.

Further Rule 28 has been amended vide Notification No. 52/2023-CT dated 26-10-2023 to provide that the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher

Clarification regarding determination of place of supply in various cases [Circular No. Circular No. 203/15/2023-GST dated 27-10-2023]

Representations have been received from the trade and field formations seeking clarification on certain issues with respect to determination of place of supply in case of

i. supply of service of transportation of goods, including through mail and courier;
ii. supply of services in respect of advertising sector; and
iii. supply of the "co-location services".

In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, hereby clarifies the issues as under

S.N.	Issue	Clarification
Place of supply in case of supply of service of transportation of goods, including through mail and courier		
1.	Sec. 13(9) of Integrated Goods and Services Tax Act, 2017 has been omitted vide section 162 of Finance Act, 2023 which will come into effect from 01.10.2023. After the said amendment, doubts have been raised as to whether the place of supply in case of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per sec. 13(2) or will be determined as per sec. 13(3)	Place of supply of services where location of supplier or location of recipient is outside India is determined as per sec. 13 of the IGST Act. Sec. 13(9) provided that where one of the supplier of the services or the recipient of services is located outside India, the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods. The said sub-section has been omitted vide sec. 162 of Finance Act, 2023 which will come into effect from 01.10.2023. It is hereby clarified that after the said amendment comes into effect, the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule u/s 13(2) of IGST Act and not as performance based services u/s 13(3). Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services. Further, it is also mentioned that the place of supply in case of service of transportation of goods by mail or courier was not covered under the provisions of sec. 13(9) before the said sub-section was amended/omitted. Therefore, on the same principles as mentioned above, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule

		u/s 13(2) of IGST Act i.e. in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services
Place of supply in case of supply of services in respect of advertising sector		
2.	Advertising companies are often involved in procuring space on hoardings / bill boards erected and mounted on buildings / land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below: (i) There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case? (ii) There may be another case where the advertising company wants to display its advertisement on hoardings / bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill	It is clarified that the place of supply in the case supply of services in respect of advertising sector, in the cases referred in (i) and (ii), shall be determined as below: ***Place of supply in Case (i)*** The hoarding / structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of sec. 12(3)(a) of IGST Act. As per sec. 12(3)(a) of IGST Act, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/structure for advertising in this case would be the location where such hoarding/ structure is located.

	boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/ structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?	***Place of supply in Case (ii)*** In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/supply (sale) of rights to use the space on hoarding/structure (immovable property)by the vendor to the advertising company for display of their advertisement on the said display board/ structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered u/s 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed / taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of sec. 12(2) of IGST Act.
Place of supply in case of supply of the "co-location services"		
3.	Co-location is a data center facility in which a business / company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure. A business/company who avails the co-location services primarily seek security and upkeep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through	It is clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services" (S. No. 3 of Explanatory notes of SAC-998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network

	a web-based interface for the hosting of its websites or other applications and operation of the servers. In this respect, various doubts have been raised as to i. whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping/storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of sec. 12(3)(a) of the IGST Act which is the location where the immovable property is located; or ii. whether the place of supply of such services is to be determined by the default place of supply provision u/s 12(2) of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire protection system, network connectivity, backup facility, firewall services, 24 hrs. monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc.	connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers. In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of sec. 12(3)(a) of the IGST Act but the same shall be determined by the default place of supply provision u/s 12(2) of the IGST Act i.e. location of recipient of co-location service. However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of sec. 12(3)(a) of the IGST Act which is the location where the immovable property is located

Clarification relating to export of services u/s 2(6)(iv) of the IGST Act 2017 [Circular No. 202/14/2023-GST dated 27-10-2023]

Various representations have been received requesting for clarification regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services as per the provisions of sec. 2(6) of the IGST Act, 2017

The issue has been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, hereby clarifies the issue as under:

Relevant legal provisions

Export of services has been defined u/s 2(6) of IGST Act. As per the said definition, any supply of services needs to fulfill five conditions for it to qualify as export of services. Sec. 2(6) of the IGST Act is reproduced below for reference:

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

i. the supplier of service is located in India;

ii. the recipient of service is located outside India;

iii. the place of supply of service is outside India;

iv. the payment for such service has been received by the supplier of service inconvertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

v. the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in sec. 8;"

One of the conditions mentioned in sec. 2(6)(iv) of the IGST Act is that the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India.

Reference is invited to RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 regarding International Trade Settlement in Indian Rupees (INR), vide which it has been clarified that to promote growth of global trade with emphasis on exports from India and to support the increasing interest of global trading community in INR, it has been decided to put in place an additional arrangement for invoicing, payment, and settlement of exports / imports in INR. Before putting in place this mechanism, AD banks shall require prior approval from the Foreign Exchange Department of Reserve Bank of India, Central Office at Mumbai. Para 3 of the Circular is reproduced below:

> *"3. In terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, AD banks in India have been permitted to open Rupee Vostro Accounts. Accordingly, for settlement of trade transactions with any country, AD bank in*

India may open Special Rupee Vostro Accounts of correspondent bank/s of the partner trading country. In order to allow settlement of international trade transactions through this arrangement, it has been decided that:

(a) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.

(b) Indian exporters, undertaking exportsof goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country."

Reference is also invited to Para 2.52 (d) of chapter related to General Provisions Regarding Imports and Exports of the Foreign Trade Policy (FTP) 2023, which has come into force from 01.04.2023,which specifies that:

Para 2.52 (d) Invoicing, payment and settlement of exports and imports is also permissible in INR subject to compliances as under RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022. Accordingly, settlement of trade transactions in INR shall take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, in accordance to the following procedures:

i. Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier

ii. Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

On perusal of the above, it can be stated that the condition(s) of sec. 2(6)(iv) of the IGST Act, 2017, can be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 and reiterated further in Foreign Trade Policy, 2023.

Therefore, it is clarified that when the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent

bank(s) of the partner trading country, opened by AD banks, the same shall be considered to be fulfilling the conditions of sec. 2(6)(iv) of IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy,2023 &extant RBI Circulars and without prejudice to the permissions / approvals, if any, required under any other law.

Clarifications regarding applicability of GST on certain services [Circular No. 201/13/2023-GST dted 01-08-2023]

Representations have been received seeking clarifications on the following issues

1. Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism;
2. Whether supply of food or beverages in cinema hall is taxable as restaurant service.

The above issues have been examined by GST Council in the 50th meeting held on 11-07-2023. The issue-wise clarifications as recommended by the Council are given below:

Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism

Reference has been received requesting for clarification whether services supplied by a director of a company or body corporate in personal or private capacity, such as renting of immovable property to the company, are taxable under Reverse Charge Mechanism(RCM) or not.

Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017 provides that tax on services supplied by director of a company or a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under Reverse Charge Mechanism.

It is hereby clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.

Whether supply of food or beverages in cinema hall is taxable as restaurant service

References have been received requesting for clarification whether supply of food and beverages at cinema halls is taxable as restaurant service which attract GST at the rate of 5% or not.

As per Explanation at Para 4 (xxxii) to notification No. 11/2017-CTR dated 28.06.2017, *"Restaurant Service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied."*

Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also.

The cinema operator may run these refreshment or eating stalls/ kiosks/ counters or restaurant themselves or they may give it on contract to a third party. The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.

It is hereby clarified that supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

a. the food or beverages are supplied by way of or as part of a service, and
b. supplied independent of the cinema exhibition service.

It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons [Circular No. 199/11/2023-GST dated 17-07-2023]

Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons u/s 25 of Central Goods and Services Tax Act, 2017.

Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sec. 25(4) of the CGST Act are being clarified in the Table below: -

S.N.	Issue	Clarification
1.	Whether HO can avail the input tax credit (hereinafter referred to as 'ITC') in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices u/s 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as 'ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?	It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in sec. 20 of CGST Act read with rule 39 of the CGST Rules. However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices u/s 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of sec. 16 and 17 of CGST Act. \ In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of sec. 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with sec. 24(viii) of the CGST Act. Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices u/s 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.

2.	In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs u/s 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the concerned BOs.	The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sec. 15(4) of CGST Act. As per rule 28(a), the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.
3.	In respect of internally generated services provided by the HO to BOs, in cases where full input tax credit is not available to the	In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily

	concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.	required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.

Clarification on issue pertaining to e-invoice [2Circular No. 198/10/2023-GST dated 17-07-2023]

Representations have been received seeking clarification with respect to applicability of e-invoice under rule 48(4) of CGST Rules w.r.t supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs registered solely for the purpose of deduction of tax at source as per provisions of sec. 51 of CGST Act, 2017

The Board hereby clarifies the issue as under:

S.N.	Issue	Clarification
1.	Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs which are registered solely for the purpose of deduction of tax at source as per provisions of sec. 51 of the CGST Act?	Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are required to deduct tax at source as per provisions of sec. 51 of the CGST/SGST Act, are liable for compulsory registration in accordance with sec. 24(vi) of the CGST Act. Therefore, Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of tax at source as per provisions of sec. 51 of the CGST Act, are to be treated as registered persons under the GST law as per provisions of sec. 2(94) of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under rule 48(4) of CGST Rules

Clarification on taxability of shares held in a subsidiary company by the holding company [Circular No. 196/08/2023-GST dated 17-07-2023]

Representations have been received seeking clarification on certain issues whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' under GST and will be taxed accordingly or whether such transaction is not a supply.

The Board hereby clarifies the issue as under:

S.N.	Issue	Clarification
1.	Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not.	Securities are considered neither goods nor services in terms of definition of goods u/s 2(52) of CGST Act and the definition of services u/s 2(102). Further, securities include 'shares' as per definition of securities u/s 2(h) of Securities Contracts (Regulation) Act, 1956. This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined u/s 7 of CGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with sec. 7 of CGST Act.

		Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period [Circular No. 195/07/2023-GST dated 17-07-2023]

Representations have been received from trade and industry that as a common trade practice, the original equipment manufacturers /suppliers offer warranty for the goods / services supplied by them. During the warranty period, replacement goods /services are supplied to customers free of charge and as such no separate consideration is charged and received at the time of replacement. It has been represented that suitable clarification may be issued in the matter as unnecessary litigation is being caused due to contrary interpretations by the investigation wings and field formations in respect of GST liability as well as liability to reverse ITC against such supplies of replacement of parts and repair services during the warranty period without any consideration from the customers

The Board hereby clarifies the issue as under:

S.N.	Issue	Clarification
1.	There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/repair services. Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?	The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then

		GST will be payable on such supply with respect to such additional consideration.
2.	Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?	In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.
3.	Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?	There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer. In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer. However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
4.	the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would	a. There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be

	be required to reverse the input tax credit in respect of such replacement of parts?	payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same. b. There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty. c. There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sec. 34(2) of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.
5.	Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the	In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sec. 2(93)(a) of the CGST Act, 2017. Hence, GST would be payable on such provision of service by the distributor to the manufacturer and

	manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?	the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.
6.	Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	a. If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. b. However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)

Clarification on TCS liability u/s 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction [Circular No. 194/06/2023-GST dated 17-07-2023]

Reference has been received seeking clarification regarding TCS liability u/s 52 of the CGST Act, in case of multiple E-commerce Operators (ECOs) in one transaction, in the context of Open Network for Digital Commerce (ONDC).

In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS u/s 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.

In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO. In this context, clarity has been sought as to which ECO should deduct TCS and make other compliances u/s 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per sec. 2(45) of the CGST Act.

The Board hereby clarifies the issues as under:

Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances u/s 52 including collection of TCS?

Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances u/s 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with sec. 52 of CGST Act and also make other compliances u/s 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with sec. 52 of CGST Act with respect to this particular supply.

Issue 2: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances u/s 52 including collection of TCS?

Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in sec. 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with sec. 52 of CGST Act and also make other compliances u/s 52 of CGST Act.

Clarification on charging of interest u/s 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof [Circular No. 192/04/2023-GST dated 17-07-2023]

References have been received from trade requesting for clarification regarding charging of interest u/s 50(3) of the CGST Act in the cases where IGST credit has been wrongly availed by a registered person. Clarification is being sought as to whether such wrongly availed IGST credit would be considered to have been utilized for the purpose of charging of interest u/s 50(3), read with rule 88B of CGST Rules, in cases where though the available balance of IGST credit in the electronic credit ledger of the said registered person falls below the amount of such wrongly availed IGST credit, the total balance of input tax credit in the electronic credit ledger of the registered person under the heads of IGST, CGST and SGST taken together remains more than such wrongly availed IGST credit, at all times, till the time of reversal of the said wrongly availed IGST credit.

The Board hereby clarifies the issue as under:

S.N.	Issue	Clarification
1.	In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.	Since the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit. Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability u/s 50(3) of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger

		individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per sec. 50(3) of CGST Act, read with sec. 20 of Integrated Goods and Services Tax Act, 2017 and rule 88B(3) of CGST Rules
2.	Whether the credit of compensation cess available in electronic credit ledger shall be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under rule 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.	As per proviso to sec. 11 of Goods and Services Tax (Compensation to States) Act, 2017, input tax credit in respect of compensation cess on supply of goods and services leviable u/s 8 of the said Act can be utilised only towards payment of compensation cess leviable on supply of goods and services. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/or reversals of credit under the said heads. Accordingly, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under rule 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

Other Notification

- Vide Notification No. 07/2023-CT(R) dated 26-07-2023, Satellite launch services [Entry 19C] shall also be included in the exempted service.
- Vide Notification No. 13/2023-CT(R) dated 19-10-2023, entry 3B has been inserted in the Exemption Notification so as to provide exemption to services provided to a Governmental Authority by way of-(a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation.
- Vide Notification No. 14/2023-CT(R) dated 19-10-2023, following entries in the Notification No. 13/2017 [RCM on services] has been amended:

i. against serial number 5, in sub-item (i), after the words “Department of Posts”, the words and brackets “and the Ministry of Railways (Indian Railways)” has been inserted
ii. against serial number 5A, after the words “Services supplied by the Central Government”, the words and brackets “[excluding the Ministry of Railways (Indian Railways)]” has been inserted.

- Vide Notification No. 16/2023-CT(R) dated 19-10-2023, following entries in the Notification No. 17/2017 [Payment by ECO] has been amended:

i. in clause (i), for the words “omnibus or any other motor vehicle”, the words “or any other motor vehicle except omnibus” shall be substituted;
ii. after clause (i), the following clause shall be inserted, namely:-

“(ia) services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company.