

S C Vora & Co.

Chartered Accountants



Changes in GST from 01.04.2022 to 31.12.2022

Important Changes in Law

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Notification No. 14/2022 -Central Tax dt 05.07.2022

- Automatic revocation of suspension of registration on filing of pending GST returns, thereby curtailing the requirement of visiting the GST officer.
- ITC reversal under Rule 42 will not be required in cases of sale of Duty Credit scripts which are exempted from GST.
- Mandatory declaration to be mentioned on the invoice for those persons whose turnover exceeds E-invoice limit (presently 20 Crore) but are not required to raise E-invoice.

For e.g. a government department, local authority, Insurance Co, Financial Institutions, NBFC, SEZ unit, Goods transport agency.

Declaration-

"I/we hereby declare that though our aggregate turnover in any preceeding F.Y from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule"



...Notification No. 14/2022 -Central Tax dt 05.07.2022

- Change in Rule 89(5) i.e. formula for calculation of refund under inverted duty structure rule. Now, even refund of input services will also be available while filing refund claim under inverted duty structure.

This change is in line with the recommendation of The Hon'ble Apex court in the case of ***union of India v. VKC Footsteps India Pvt Ltd No 4810 of 2021.***

- **Form PMT 03A**

In case wherein refund has been availed by the tax-payer in contravention to section 54(3) or Rule 96 (10), then such refund had to be paid back in cash by the refund claimant.

Now, such amount can be re-credited to ECL balance of tax-payer through FORM PMT-03A,. Application to GST officer to be made along with copy of DRC-03 evidencing payment of tax, interest and penalty by the taxpayer



...Notification No. 14/2022 -Central Tax dt 05.07.2022

- Risky Exporters

There are increasingly cases, wherein certain exporters are flagged as 'risky dealers' by the central DGRAM system. The IGST refunds were withheld at Customs office due to such classification.

Now, such claims will be transmitted to jurisdictional GST office in Form GST RFD-01 and will be processed as per normal refund rules as per Rule 89

Notification No 17/2022 –Central tax dt. 01.08.22

- Uptil date, those tax-payers whose aggregate turnover exceeded 20 Crore were required to generate E-invoice on the GST portal. However, w.e.f. 01.10.2022, **the said limit of Rs. 20 Crore is reduced to Rs. 10 Crore.**



CGST Notification No 18/2022 & CGST Notification No 19/2022 dt 28.09.22

- Section 100 to 114 [except clause (c) of section 110 and section 111] of the Finance Act 2022 has been made effective from 01.10.2022.
- Clause (c) of section 110 and section 111 of the Finance Act was already notified vide earlier CGST Notification No. 09/2022 dated 05.07.2022
- With this, all GST amendments as per Finance Act 2022 has been made effective.
- Further, corresponding changes in GST Rules have also been made vide Notification No. 19/2022.
- Please note that Finance Act 2022, has made very important changes in terms of the GST Law, which is summarized in next slides.

It is proposed to increase the time limit for all the following categories from September following end of financial year to the month of November following the end of financial year:

1. Claim of ITC in GSTR 3B in respect of invoice or debit note missed in a particular financial year
2. Rectification or omissions of transactions in GSTR-1 & GSTR-3B
3. Statement furnished by e-commerce operator in Form GSTR-8
4. Issuance of debit note or credit note for invoice of a particular financial year

While the extension is granted upto 30.11, it is imperative to note that such benefits are to be claimed by 20th November (i.e. due date for October monthly GST returns)

1. EXTENSION OF 2. VARIOUS TIME LIMITS

- The Bill proposes to rectify the anomalies in GST Law with respect to claiming of ITC, filing of returns in Form GSTR-2, GSTR-3 which had never seen the light of the day since introduction of GST.
- Accordingly, Section 42, 43 and 43A is proposed to be abolished. Such sections dealt with matching concept of ITC and filing of GSTR-2, GSTR-3, etc.
- Further, It is proposed to insert one more condition in Section 16(2) Of CGST Act with respect to availment ITC i.e. sub section (ba). This new sub-section read with new proposed Section 38 restricts ITC in many cases.
- Section 38 provides for an auto-generated statement on GST portal which will prescribe the manner, conditions and restrictions for claiming ITC on inward supplies.

2. CHANGES IN ITC

Restrictions in availment of ITC as per newly proposed Section 38

1. Where supplier has not issued invoices within prescribed period after taking GST registration
2. Where supplier has defaulted in payment of taxes for continued period of time as may be prescribed
3. Where GSTR-1 of the supplier (i.e. output tax payable) exceeds its GSTR 3B (i.e output tax paid)
4. Where supplier has availed ITC in excess of permissible limit in terms of S. 38 of CGST Act
5. Where supplier has discharged his output tax liability through Electronic Credit Ledger in excess of permissible limits in terms of S. 49 (12) of CGST Act
6. Where particular supplier/ vendor belongs to any specified class of person as prescribed by government

3. ADDITIONAL CONDITIONS FOR CLAIMING ITC

Section 41: ITC Reclaim

- It is proposed that ITC to be reversed in cases where tax has not been paid by the supplier. Further, recipient shall be entitled to re-avail the credit so reversed, once supplier makes the payment of such tax

Section 49(12): Restriction on ITC

- It is proposed to prescribe restrictions in respect of utilization of available ITC in the Electronic Credit Ledger for making payment of output tax in certain cases.
- Government may specify the proportion of output tax which cannot be discharged through the Electronic Credit Ledger and will have to be compulsorily paid through cash

Section 50: Interest on ITC

- Presently, interest is being recovered @ 24% on wrong avilment of ITC even where such credit was not utilized
- It is proposed that w.e.f. 1st July, 2017 the interest would be leviable on ITC only when such credit is wrongly availed and utilized both.

4. OTHER ITC RELATED CHANGES

Section 29: Cancellation of GST registration

It is proposed that GST authorities will be empowered to cancel GST registration where:

- Composition taxpayer has failed to furnish return for the financial year beyond three months from due date
- Regular taxpayer has failed to furnish returns for six consecutive tax period.

Section 49(10): Transfer of balance of Cash Ledger

- It is proposed to allow transfer of GST (tax, interest, penalty, fee) available in Cash Ledger of a registered person to another registration (in same or different state) having same PAN

5. OTHER IMPORTANT CHANGES

Interest Calculation

Major change in procedure of calculation of interest. Three type of scenarios are envisaged for calculation of interest as per amended Rule 88B. The summary of the same is as under:

Scenario	Section	Manner of calculation
Late furnishing of GST returns	50 (1)	On amount debited from electronic cash ledger from due date till actual furnishing of return.
In other cases, where output tax is unpaid	50 (1)	Interest shall be levied on entire portion of unpaid tax amount from date when tax was due uptill the actual payment of tax. This is irrespective whether output tax is paid by cash or credit ledger.
In cases where ITC wrongly availed and wrongly utilised	50 (3)	From the date when ITC wrongly availed and utilised till the date of reversal of such credit or payment of such tax. In case wherein ITC is only wrongly availed but not utilized, no interest will be payable

ITC wrongly utilized shall be when balance in ECL falls below amount of ITC wrongly availed i.e. **when ECL balance becomes insufficient to cover point no 3 above. Interest from such date till date of reversal will be applicable.**



Other Important Notifications

Notification No 26/2022 dt. 26.12.22

Rule 8 & Rule 9- Registration provisions:

- Mandatory verification of OTP & email id linked to PAN
- Biometric authentication and photograph verification at GST center in selected cases identified by data analytics and risk parameters. Physical verification of POB in above selected cases.
- Currently biometric provision will be applicable only in state of Gujarat (Notification No 27/22 dt 26.12.22)

Rule 37A- Reversal of ITC in case of non payment of tax and re-availment.

- In cases wherein supplier has not deposited GST, buyer will be liable to reverse ITC along with interest upto 30th November from end of FY.
- Buyer may re-avail the ITC as and when supplier deposits the GST in its Form GSTR 3B



Rule 46- Tax invoice

- In case of supply to URD person through E-commerce operator or through online information database access or retrieval services; mentioning of name, address, PIN code, state code is made mandatory irrespective of value of supply

Rule 49 r.w. Rule 88C- Short Liability as per GSTR-1 vs GSTR-3B

- If liability declared in GSTR-1 exceeds liability paid in GSTR-3B for a particular tax period, the tax-payer will get an intimation in Form DRC-01B on its GST portal.
- The tax payer will be required either to pay the difference or furnish a reply within 7 days. Failure to do so may result in blocking of GSTR-1 of next period.



Rule 89- Refund by unregistered person

- Law has been amended to provide for refund by unregistered person who has borne the burden of GST on account of cancellation of contract.
- Documents such as copy of invoice, payment proof, agreement, etc to be provided along with refund application.

Rule 108 & Rule 109- Appeal provisions

- Amendment relating to submission of self certified copy of order/ decision by assessing authority and date of filing of appeal.

Changes in Form GSTR-1

- Table 14, 14A and 15, 15A(1), 15(A)(II) has been inserted for disclosure of sales through E-commerce operator and amendment for the same.

Change in GST Rate

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Bricks Manufacturers & Traders.

Notification No 01/2022- Central Tax (Rate) & Notification 2/2022 Central Tax (Rate) dated 31.03.2022

GST rate for supply of Fly Ash bricks, building bricks, roofing tiles falling under HSN 6815, 6901, 6904 & 6905 have been modified. The GST rates wef 01.04.2022 would be as under:

- Option 1- 12% with ITC
- Option 2- 6% without ITC

Notification No 03/2022 dated 31.03.2022

GST Registration threshold limit for persons dealing in above category of goods limit has been decreased from Rs. 40 Lakhs to Rs. 20 Lakhs for GST Registration wef 01.04.2022.

Notification No 04/2022 dated 31.03.2022

Bricks manufacturers and dealer (having turnover upto Rs. 1.5Crore) were subjected to the benefit of Composite GST rate of 2% and 1%).

However, wef 01.04.2022, the benefit of Composition scheme has been removed for above persons.



Goods Transport Agency

Notification No. 03/2022 (Central Tax- Rate) dt 13.07.22 (wef-18.07.2022)

- GTA desiring of paying GST under forward charge (i.e. 5% without ITC or 12% with ITC) will be required to intimate the same to GST jurisdictional officer vide declaration in Annexure V.
- The declaration in 'Annexure V' has to be filed before the beginning of financial year i.e. by 15th March
- However, for F.Y. 2022-23 GTA shall exercises the option on or before **16th August, 2022.**

Notification No. 05/2022 (Central Tax- Rate) dt. 13.07.22

- In case wherein GTA has exercised option to pay GST under forward charge, the recipient will not be liable to pay GST under reverse charge. However, recipient will be required to keep the following on record
 - GST registration certificate of the GTA
 - Declaration in Annexure V filed by GTA with his jurisdictional GST office.
 - Copy of GTA invoice along with necessary declaration

Renting of Residential Dwelling

Notification No. 04/2022 (Central Tax- Rate) dt 13.07.22 (wef-18.07.2022)

- The exemption entry of residential renting has been modified so as to exclude cases wherein residential property is given on rent to a GST registered person.

Notification No. 05/2022 (Central Tax- Rate) dt. 13.07.22 (wef-18.07.2022)

- Further, liability to pay GST in such cases has been casted upon the registered service under reverse charge mechanism.
- On account of above amendments, one will have to appropriately discharge tax taking into account numerous factors such as type of property i.e. residential/ commercial, whether service recipient is registered or not, reverse charge or forward charge, etc.
- We have summarized all the different scenarios in a tabular manner for ready reference

Renting of Immovable property- GST implications

Scenario	Service Provider	Service Recipient	Type Of Property	FCM/RCM
1.	Registered	Registered	Residential	RCM
2.	Registered	Unregistered	Residential	Exempt
<u>3.</u>	<u>Unregistered</u>	<u>Registered</u>	<u>Residential</u>	<u>* RCM</u>
4.	Registered	Registered	Commercial	FCM
5.	Registered	Unregistered	Commercial	FCM
6.	Unregistered	Registered	Commercial	Exempt

Notification No. 15/2022- Central Tax (Rate) dt 30.12.2022 :

It is hereby notified that no RCM is payable, if the premises are rented to the registered person in personal capacity (For e.g. proprietor having GST No and paying rent in personal capacity).

Works Contract- Part 1 (wef-18.07.2022)

Tariff Entry	Category of Works Contract service	Existing Rate	New Rate
3(iii)	WC services to government pertaining to historical monument, archeological site, canal, dam, pipeline, etc	12%	18%
3(iv)	WC services to of road, bridge, tunnel, terminal for road, civil structure under JNNUR, PMAY, EWS etc	12%	18%
3(v)	* WC of railways, monorail, metro, single residential unit, low cost houses under PMAY, affordable housing under Department of Economic Affairs , etc	12%	18%
3(va)	WC in case of affordable housing pertaining to new scheme of Builder	12%	18%
3(vi)	WC services to government pertaining to civil structure for use other than commerce, structure for educational/ clinical/ cultural establishment	12%	18%
3(ix)	WC services by sub-contractor to contractor for above	12%	18%

* Contractor rate for affordable housing has been increased from 12% to 18% .However, for builders following old scheme, it is still unclear whether rate for affordable housing of 8% is increased or not

Works Contract- Part 2 (wef-18.07.2022)

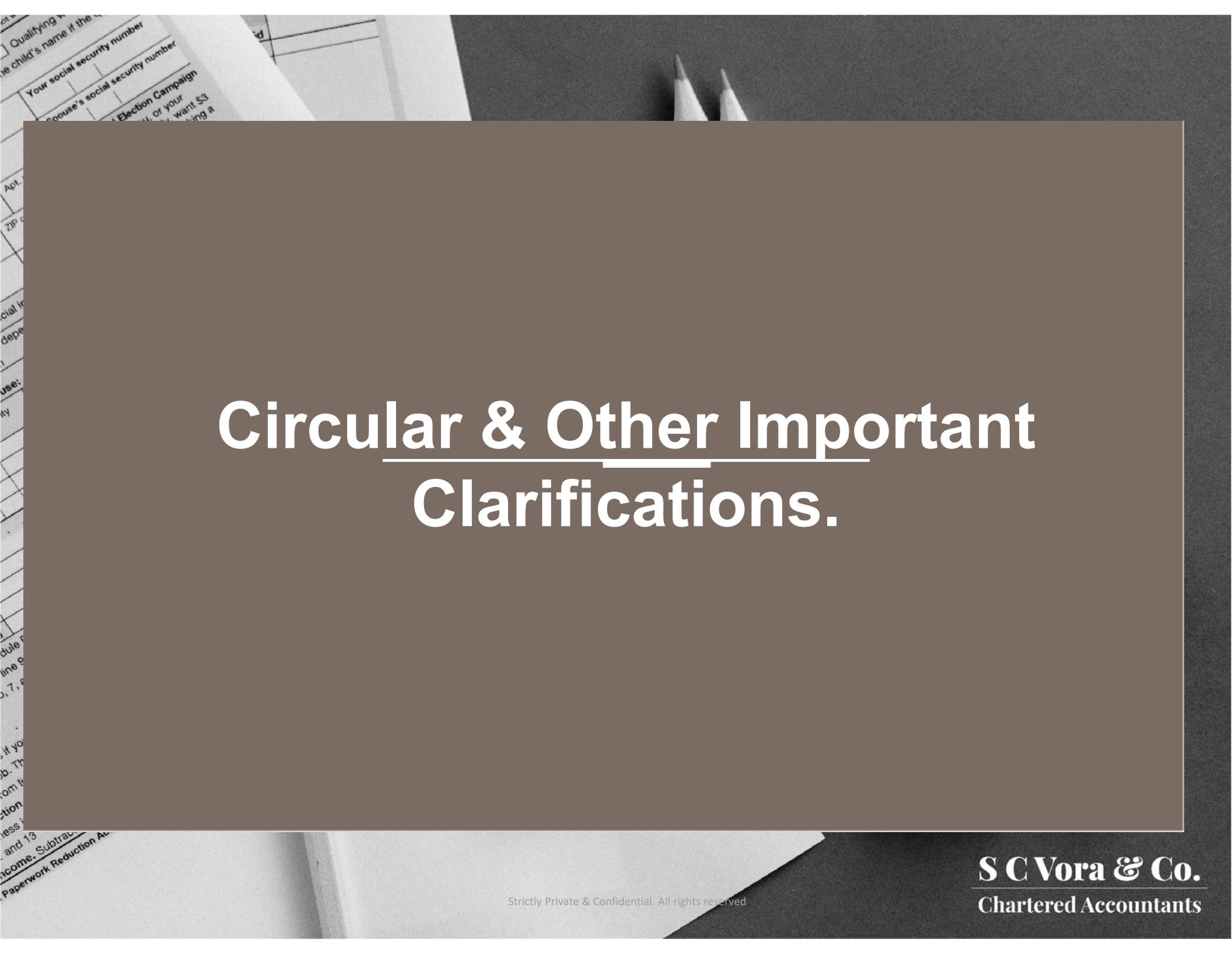
Tariff Entry	Category of Works Contract service	Existing Rate	New Rate
3 (vii)	Works contract services involving predominantly earth work (>75% value) provided to government	5%	12%
3(x)	WC services by sub-contractor to contractor for above	5%	12%
	Category wherein no rate change		
3 (viii)	Works contract services in respect of offshore works contract relating to oil and gas	12%	12%
3 (xi)	House-keeping services such as plumbing, carpentry, etc through Electronic Commerce	5%	5%

Institution Based Exemption (wef-18.07.2022):

Original Notification	Category of service	Existing Rate	New Rate
Notification 03/2017- Central Tax Rate dt 28.06.17	Goods supplied for petroleum operations to ONGC or similar companies under Essentiality Certificate by DG of Hydro Carbons	5%	12%
Notification 45/2017- Central Tax Rate dt. 14.11.17	Scientific / technical instruments, etc supplied to Research institution	5%	Respective rate of goods

Other Important Rate Changes (wef-18.07.2022):

HSN	Description	Old Rate	New Rate
	Pre-packaged and labelled goods (ie. Food items branded or un-branded)	0%	5%
8419 12	Solar water heater & System	5%	12%
8413	Power driven pumps primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps	12%	18%
7102	Goods other than rough diamonds or simply sawn diamonds, industrial or non-industrial"	0.25%	1.5%
7104	Goods other than Synthetic or reconstructed precious or semiprecious stones [other than diamonds], whether or not worked or graded but not strung, mounted or set; ungraded synthetic or reconstructed precious or semiprecious stones [other than diamonds], temporarily strung for convenience of transport; synthetic or reconstructed diamonds, unworked or simply sawn or roughly shaped	0.25%	1.5%
9993	Services provided by a clinical establishment by way of providing room (other than ICU / CCU /ICCU / NICU) having room charges > Rs. 5,000 per day	0%	5% (w/o ITC)
9963	Supply of hotel accommodation having value of supply of a unit of accommodation upto Rs. 1,000 per unit per day or equivalent	0%	12%



Circular & Other Important Clarifications.

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Circular No 171/03/2022 dt 06.07.22- Clarifications on demand and penalty for Fake Invoicing....

Scenario 1: Outward supply of invoice from A to B without actual supply of goods

- No supply of goods from A to B and hence no demand of output tax on A.
- However, penal action under S. 122 (1) (ii) of CGST Act will be initiated against A.

Scenario 2: Inward supply of invoice by B from A without actual supply of goods

- B has availed ITC in contravention of the provisions of S. 16(2) of CGST Act. Therefore, B will be liable for reversal of ITC with interest .
- No other penalty, except under S. 74 of CGST Act can be invoked on B.

...Circular No 171/03/2022 dt 06.07.22- Clarifications on demand and penalty for Fake Invoicing

Scenario 3 : Supply of invoice from A to B to C without actual delivery of goods in the entire chain.

- No reversal of ITC by B for purchase from A.
- No demand of output tax on sale from B to C.
- However, penal action under S. 122 (1) (ii) will be initiated on B for issuing invoices without actual supply of goods
- Further, penal action under S. 122 (1) (vii) to be taken on B for utilizing ITC without actual receipt of goods

Circular No 170/02/2022 dt 06.07.2022- Change in GSTR 3B

1. Furnishing of Inter-state supplies

- Details of inter-state supply to URD person and to composition tax payers are to be mandatorily reported in Table 3.2 of Form GSTR 3B and Table 4A/ 4C/ 7B/ Table 5 or Table 9/10 of GSTR -1.
- Such details are to be furnished place of supply wise i.e. for each state separately.
- Accordingly, taxpayers will be required to update their customer database properly with correct State name and ensure that correct POS is declared in the tax invoice.

2. Furnishing of details of ITC reversal/ ineligible ITC

- Total ITC (eligible + ineligible) is to be shown in Table 4A of GSTR 3B
- Following type of reversal is to be shown in **Table 4 (B) (1)** of GSTR 3B:
 - Rule 38 : Reversal by bank or NBFC
 - Rule 42 : Common ITC reversal
 - Rule 43 : ITC reversal on sale of capital goods
 - Ineligible ITC as per S. 17(5)

...Circular No 170/02/2022 dt 06.07.2022- Change in GSTR 3B

- Following type of reversal is to be shown in **Table 4 (B) (2)** of GSTR 3B
 - Rule 37 : Non payment to vendor beyond 180 days
 - S. 16(2)(b) : Invoice received but goods/ services not received
 - S. 16(2)(c) : Invoice not uploaded/ paid by the supplier
- Following details are to be shown in **Table 4 (D)** which is only for presentation purpose
 - **Table 4 (D) (1)**
ITC Reclaim on account of Rule 37, S. 16 (2) (b) and S. 16 (2) (c)
. Please note this ITC has to be taken first in Table 4 (A)(5)
 - **Table 4 (D) (2)**
ITC of invoices when their return is filed after due date i.e section 16(4)
ITC on account of place of supply mis-match
Please note that such ITC is not to be taken in Table 4 (A) (5)



Circular No. 172/04/2022 dt 06.07.2022

- Clarification on proviso to S. 17(5)(b). ITC pertaining to food, beverages, catering, leasing, renting of motor vehicle, membership of club, health, fitness Centre, travel benefits when provided by an employer under an obligation of any law is clarified to be allowed.
- Perquisites provided by the employer to the employee in terms of contractual agreement will not be subjected to GST. Examples of this may be canteen facility, bus services, etc. provided by employer.
- Electronic credit ledger can be used for payment of output tax whether self-assessed or as a consequence of any proceedings.

Circular No 178/10/2022 dt-03-08-2022- GST on Liquidated Damages

1. Liquidated damages:

- Liquidated damages should not be construed as a consideration for tolerating breach or non-performance of contract. The payment is rather on account of not tolerating the breach of contract. LD is stated under the contracts to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. It is a measure of loss and damage that the parties agree, would arise in case of breach of contract. It does not act as a remedy for breach of contract.
- Where it would not be regarded as consideration for independent arrangements: Damages to property, Negligence, Piracy, Unauthorized use of trade name, Copyright, Penalty for delayed construction of house, Forfeiture of earnest deposit where it would be regarded as 'supply' irrespective of the fact that the consideration recovered by whatever name called: Contract of transport of passenger stipulating ticket shall be partially forfeited if passenger does not show up, Forfeiture of security deposit in case of cancellation of tour by customer, Pre-Payment Penalty for early closure of loan, Amount paid for early termination of lease.



...Circular No 178/10/2022 dt-03-08-2022- GST Liiquidated Damages

It was clarified that these supplies are ancillary to principal supply under the contract and therefore they shall be assessed for taxability as principal supply. If the principal supply is exempt, the same would not be taxable.

2. Penalty:

- Penalty levied for violation of laws such as traffic violations, pollution norms or other laws, cheque dishonor, cannot be regarded as consideration for any supply received and are not taxable.

3. Notice pay recovery:

The recovery made by the employer on account of premature leaving of employment by an employee. The premature exit from a job results in disruption of employer's business and therefore the employer recovers a certain amount as per the employment contract, to discourage non-serious candidates from taking up employment. The same cannot be considered as consideration for tolerating an act but as penalties for dissuading non-serious employees from taking up the employment and to discourage and deter such a situation

Circular No 177/09/2022 dt-03-08-2022- Real estate sector

1. Sale of developed plots

- There was ambiguity w.r.t developed plots in a manner that whether it is sale of land covered under Schedule- III or supply of construction services covered under Schedule –II

Now, The GST council has proposed that

sale of land after leveling, laying down of drainage lines etc. is sale of land and does not attract GST.

2. Preferential Location Charges

- Location charge or preferential location charges (PLC) are part of consideration charged for long term lease of plot of land and shall get the same treatment under GST.

Instructions No. 02/2022-23 GST – Investigation dt. 17.08.2022

Vide the above instruction, the CBIC has issued guidelines for Arrest & Bail in relation to offences punishable under the CGST Act

Instructions No. 03/2022-23 GST – Investigation dt. 17.08.2022

Vide the above instruction, the CBIC has issued guidelines regarding manner of issuance of summons under Section 70 of the CGST Act



Instructions No. 04/2022-23 GST dt. 01.09.2022

- Vide the above instruction, the CBIC has issued strict guidelines and legal proceedings to be followed before launching prosecution on any tax-payer.
- The following aspects are covered vide the said Instruction
 - Sanctions
 - Monetary limits
 - Authority to sanction prosecution
 - Procedure for sanction
 - Withdrawal of prosecution
 - Monitoring of prosecution
 - Compounding of offences & general guidelines
- The above instructions lay down strict mechanism and protocols to be followed before prosecution and accordingly appears to be step in the right direction.



Clarification on ITC on GST charged on export freight (Circular No. 184/16/2022-GST dt.27.12.22)

- As per Section 12(8) of IGST Act, the place of supply in case of transportation of goods shall be place of destination of goods.
- Therefore, supplier of export freight services are supposed to report such supplies in its GSTR -1 with state code '96- Foreign Territory'.
- It is further clarified that ITC on above IGST charged shall be available to the recipient.



GSTR 3B vs GSTR 2A mis-match for FY 17-18 & 18-19 (Circular No. 183/15/2022-GST dt. 27.12.22)

- Vide above circular, it has been clarified to allow ITC on following scenarios to the tax payer:
 1. Supplier has failed to file GSTR-1 but has filed GSTR-3B
 2. Supplier has filed GSTR-1 and GSTR 3B, but failed to report a particular supply in GSTR-1
 3. Supplier has filed GSTR-1 and GSTR-3B, but wrongly reported as B2C supply in GSTR-1
 4. Supplier has filed GSTR-1 and GSTR-3B, but wrongly reported supply to incorrect GSTIN
- In ITC in above cases > Rs. 5 Lakhs, CA certificate certifying supplies made by taxpayer and GST has been paid in Form GSTR-3B may suffice.
- In case ITC is < Rs. 5 Lakhs, self certified certificate from the supplier may suffice



Clarification on ITC on GST charged on export freight (Circular No. 184/16/2022-GST dt.27.12.22)

- As per Section 12(8) of IGST Act, the place of supply in case of transportation of goods shall be place of destination of goods.
- Therefore, supplier of export freight services are supposed to report such supplies in its GSTR -1 with state code '96- Foreign Territory'.
- It is further clarified that ITC on above IGST charged shall be available to the recipient.

Reduction of GST dues as per IBC Act (Circular No. 187/19/2022-GST dt.27.12.22)

- The circular covers cases wherein confirmed GST demand in Form GST DRC 07/ DRC 07A of the corporate debtor has been reduced by way of NCLT/ IBC proceedings.
- In such cases, jurisdictional Commissioner shall issue intimation in Form DRC-25 reducing such demand and recovery proceedings therein.

The background features a dark grey surface with two white pencils at the top. On the left, there are several overlapping white documents, likely tax forms, with various fields and text visible. A large, semi-transparent brown rectangle is centered over the image, containing the main title in white text.

High Court & Supreme Court Judgements

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Facts of the case:

- The petitioners had filed writ petitions before the Gujarat HC regarding levy of IGST on the component of ocean freight paid by the foreign seller to a foreign shipping line, on a reverse charge basis. .
- The Gujarat HC pronounced the verdict in favor wherein they held that impugned notifications are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency.
- However, the revenue preferred appeal before the Supreme Court.



Ruling by Supreme Court:

- Supreme court has upheld the decisions of Gujarat High court by **stating that recommendations of GST Council are not binding on the union and states & they are recommendatory in nature**
- The IGST Act and the CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient – in this case the importer – by Notification 10/2017 is only clarificatory.
- The recipient of freight services (provided by shipping line) in case of CIF contracts is the foreign exporter and not the India importer. Therefore, importer of goods in India cannot be regarded as recipient of services.
- The Court after a detailed deliberation held that under the IGST Act, no tax is leviable on ocean freight for imports on a CIF basis and the impugned notifications are ultra vires the IGST Act



Gujarat High Court in case of Munjaal Bhatt v. Union of India – [R/SCA/1350/2021]

- In case of builder/ developer, the Government has granted fixed 1/3rd land deduction from taxable value towards value of land.
- Thus while levying GST to its customers, builder use to claim standard 1/3rd deduction and levy GST at applicable rate on balance portion.
- The 1/3rd land abatement is provided under GST Law irrespective of location, type, quality and other characteristics of the land.
- The Gujarat High Court in captioned case has upheld that Deeming fiction of 1/3 value of land or undivided share in land as per para 2 of impugned notification would not be mandatory and would be available at the option of taxable person
- The HC has held that if the value of land or undivided share in land would not be ascertainable, then this deeming fiction of 1/3rd value of land can be taken and that too at the option of the taxable person.

THANK YOU



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