



FOR STUDENTS
VOL. 1 - NO. 2
DECEMBER 2023

From President's Desk...

Dear Students and Readers,

Wishing everyone a very Happy Diwali and prosperous New Year. May this year bring happiness and glory in all students' lives and may your hard work and perseverance help you achieve and excel in your academic milestones as many of you would have appeared for November examinations held by ICAI and would be resuming office post festive celebrations and examinations.

The month of December shall be busy period due to deadlines of GST Annual Compliances of the preceding financial year and Advance Tax Payment. Students Committee at CVOCA had planned a virtual session for students appearing for November/December 2023 exams which is now available on YouTube “to boost their last-minute exam preparations named, “Final Countdown: Conquering the CA/CS/CMA exam” on October 21, 2023 under Buddy MITRAM initiative.

The students who have missed to attend can see the same as our dynamic speakers who were expert in their respective field have shared their valuable insights from different angles.

The team at CVOCA is also planning Industrial Visit and Residential Refresher Course for students along with other students programs for learning and mentoring of students so we request everyone to stay connected.

Also, our mentoring team of expert professionals is just a call away to guide you and mentor you in any phase of this journey. I appeal our student's community to reach out to them to have clarity which shall help you to rise and shine.

I request all Students Members to take part in all the activities organized by the Students Committee and wishing you all the very best and bright future.

Looking Forward.....

Thank you all..... Always in Gratitude

CA Jeenal Savla

December 16, 2023

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CA Nilesh Dedhia

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The Chartered Accountancy course in India is amongst the best of its kind in comparison to the courses offered in other countries. Also, it is rated as one of the most difficult professional courses among all other streams of education in the country.

The reason for the above is the quality and values that the profession of Chartered Accountancy has, and which it wishes to retain. The vast curriculum, along with the rigorous practical training requirement (Articleship), is to ensure that the competent professionals carry the baton of the profession forward.

Theoretical knowledge or practical knowledge alone cannot make a perfect professional. Both theoretical and practical aspects should go hand in hand to become an extra ordinary professional.

It is important that whether the CA has the conceptual clarity and more importantly knows how to apply the theory learnt. It is estimated that those students who apply what they learn in the work done [statutory/ internal audit, tax audit] as well as learn the theory behind what they have been doing would be greatly advantaged in their examination especially at the final level.

Articleship is the golden period of a CA Student's career. How you under go it, would have an impact on what type of CA you are destined to become. Taking Articleship lightly would have an adverse impact on training and overall learning experience.

I personally believe that most of the readers of this Indradhanush would be doing articleship in mid-sized firm. So let's understand what would be your approach during the articleship and what are the benefits doing articleship in such mid-sized firm.

In these firms you are exposed to all levels of work early; from basic verification to finalization in a short time. Also, you may be able to handle the work independently. The advantage of midsized firms would be that the level of hierarchy would not be like the big firms. You might have a chance to directly interact with the partner of the firm which would help you in getting a more exposure in crucial areas. These kinds of firms may not have ready implemented systems or procedures to conduct their regular assignments, which would give a chance to the articles to apply their own mind and try to develop the systems as required. This would help you having a better problem solving techniques. Your primary objective would be to get a string hand in the fundamental concepts and practices.

Every student have their own different perceptions towards the period of articleship. However, the striking line of difference that categorises two easily identifiable groups of articles is the one that considers articleship as an extended college life and thereby being quite lenient towards the practical learning portion in the articleship and then there is other group that consider itself as a matured student who are more focused and clear on what they really want out of this beautiful 3 or 2 years tenure and absorbs best out of it. They work hard during the office hours and study harder after adequately answering their office responsibilities. Of course, they also make good friends in the journey with a perfect equilibrium of fun and learning acts as a catalyst to be more focused and boosts their strength to newer heights.

While learning is a continuous process in life but it is more so when one is a student.

Bill Gates said that “The first 5 years have so much to do with how the next 80 turn out”.

Conclusion:

The ultimate Mantra is simple! Learn, Learn & Learn – Be curious & childlike.

Benefits from articleship are directly proportionate to the attitude with which one approaches it. It completely depends on whether you presume the period of articleship as a golden opportunity to experience the professional world or as a mandatory time cycle to crawl and reach the exit gates by completing the final exam.

In nutshell, the goal of articleship must be to become an extraordinary professional prior to being officially designated as “The Chartered Accountant”.

Sd/-

CANilesh Dedhia
Chairman



NAVIGATING THE RIDE ON GST NOTICES

Harshvi Gangar

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Let me first start with a very basic and essential question “**What is a Show Cause Notice and why is it important under the GST law?**” to entice you readers!

A show cause notice 'SCN' is one of the most basic yet indispensable part of proceeding within the realm of taxation. SCN, as it indicates, is a formal notice issued by the tax authorities under the Goods and Services Tax (GST) in India to a taxpayer, requiring them to explain or justify a particular action or inaction that is in violation of the GST laws. The issuance of an SCN by the tax authorities marks the inception of a legal action and holds substantial importance in the overall taxation process. Further, it is one of the most important stages for the taxpayers which gives them an opportunity to submit their defense as to why they should not proceed against the alleged violation.

How is such notice communicated to the taxpayers? There are various modes of communications by the department under GST [u/s 169(2) of CGST Act, 2017]:

- by giving or tendering it directly or by a messenger including a courier;
- by registered post or speed post or courier with acknowledgement due;
- by sending through the e-mail address provided at the time of registration or as amended from time to time;
- by making it available on the common portal;
- by publication in a newspaper where the taxable person resides;
- If none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence;
- If such mode is not practicable for any reason established and satisfied by the officer, then by affixing a copy on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

The first and foremost step in accepting SCN is examining the '**validity of service**'. One must examine whether the service of notice is a (i) valid notice (ii) under the correct section and rule (iii) by the Proper Officer. Further, following are the few important aspects to **identify its validity**:

- The allegations in the SCN need to be specific and cannot be vague which would amount to the noticee not being given proper opportunity to meet the allegations in the SCN. If the person is not provided with a reasonable opportunity of making his objection against the SCN, then the said SCN does not fulfil the ingredients of a proper SCN and amounts to violation of principles of natural justice. [*NKAS Services Pvt. Ltd. v. State of Jharkhand* [2022 (58) G.S.T.L. 257].
- The SCN issued to a taxpayer shall not be based on assumptions and presumptions [*Oudh Sugar Mills Ltd. vs. UOI-1978 (2) ELT (J172) (SC)*]

- Monetary Limit for issuance of show cause notices & orders u/s 73 & 74 of CGST Act (for centre)

Designation of Officer	CGST	IGST	CGST & IGST
Superintendent	Up to Rs. 10 lakhs	Up to Rs. 20 lakhs	Up to Rs. 20 lakhs
Deputy or Assistant Commissioner	Above Rs. 10 lakhs up to Rs. 1 crore	Above Rs. 20 lakhs up to Rs. 2 crores	Above Rs. 20 lakhs up to Rs. 2 crores
Additional or Joint Commissioner	Above Rs. 1 Crore	Above Rs. 2 Crore	Above Rs. 2 Crore

In **Pahawa Chemicals (P) Ltd. vs. CCE – 2005 (181) ELT 339 (SC)**- it was held that SCN issued by an officer in excess of monetary limit was not acceptable.

- Time Limit to issue Show Cause Notice under CGST Act, 2017

Particulars	Type	Time limit
Section 73	Bonafide/Genuine Cases	Within 2 year & 9 months of services from due date annual return filing.
Section 74	Malafied/ Fraud Cases	Within 4 years & 6 months from the due date of annual GST Return

**Kindly note that presently the above dates have been extended from FY 2017-18 to FY 2019-20 for Bonafide Cases.*

Financial Year	Bonafide Cases	Malafide Cases
2017-18	September 30, 2023	August 5, 2024
2018-19	December 31, 2023	June 30, 2025
2019-20	March 31, 2024	September 30, 2025

- It is important for the taxpayer to check whether the officer issuing the said notice has valid jurisdiction to do so. In **Modern Industrial Enterprises v. CCE (2006) 193 ELT 513 (Cestat, Delhi)**-it was held that show cause notice is not valid in absence of proper jurisdiction.
- As per Rule 142(1)(a) of the CGST Rules, 2017, the proper officer is required to serve along with the notice, a summary thereof electronically in form GST DRC-01.
- As per rule 26 of the CGST Rules, 2017, all applications, including reply, if any, to the notices, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with DSC or through e-signature. In **Marg ERP Ltd. vs. Commissioner (2023) 7 Centax 174 (Del)** it was held that, an unsigned notice/order cannot be considered as an order and hence cannot be sustained.

Now let's discuss, "How to effectively respond to SCN?"

- As discussed above, examining the validity of a notice is the first step if it is not, the same can be challenged on the grounds of validity in the above-mentioned cases without going into the merits of the case.
- Replying to the SCN in a timely manner is to be ensured by the taxpayer, as it might lead to challenges regarding the subsequent order. Hence, one must ensure to reply within the stipulated time or, when necessary, request an adjournment to uphold procedural fairness. Additionally, maintaining a tracker aids in monitoring the status. However, the reply to the SCN and additional submissions, if any, can be submitted at the time of the hearing as well.
- Maintaining a structured flow in responding to SCN can enhance the clarity and effectiveness of the reply. The suggested flow can be initially laying out the facts pertaining to issues, followed by the submission of supporting documents along with analysis and clarification based on evidence, followed by corrective measures taken (if any), and ending with a concluding paragraph. This structured approach can help the recipient easily follow and understand the provided information while reinforcing the credibility and strength of the response.
- All pertinent information, including statements, contracts, agreements, and supporting documentation, can be submitted along with the reply.
- The SCN reply is a very important stage to lodge legal rights such as the right to cross examination, retraction of statements, and the right to seek relied as well as non-relied upon documents. It should also be noted that the order cannot traverse beyond the allegations in the SCN.
- In GST, notices primarily concern discrepancies in amounts. Tabulated explanations outperform paragraphs in clarifying these differences, leading to a clearer understanding of the data.
- Ensure that the amounts mentioned in the notice matches with the returns filed & books of accounts. Sometimes the value mentioned in the notice does not match with books or cases are found where reports obtained from GST Portal reflects incorrect amounts wherein grievances can be filed.
- Citing the latest decisions of higher judicial forums/case laws would be beneficial, as the principles of judicial precedents holds significant weightage during subsequent litigations.
- Ensure proper acknowledgement has been obtained after having filed the reply to notice.
- It would be advisable to opt for personal hearing as the immediate response helps in providing immediate clarifications, reducing ambiguity, ensuring all the sides are heard and understood thoroughly.

With this, I would like to conclude by saying that "compliance is not the end; it's rather an ongoing journey". Over the past five years, the laws and regulations governing GST have undergone significant transformations, with continuous development occurring on a daily basis. The number of GST departmental audits has increased and so have the show cause notices. Well understanding the significance of notice validity and formulating an effective response aid in safeguarding one's rights and interests during the adjudication process. Hence, it is imperative to engage in a careful, systematic, and informed manner when replying to a Show Cause Notice, as it greatly influences the outcome and resolution of the GST-related matters at hand.



ISSUES IN ITC WITH RESPECT TO BOOKKEEPING

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To begin with, I thank CVOCA for this opportunity. Book keeping (or accounting) is the foundation on which GST-relevant reports/returns can be made. Focusing on ITC i.e. Input Tax Credit, two important aspects are :

1. Eligibility of ITC
2. Availment and Utilization of ITC

Eligibility of ITC

From a practical point of view, the first step for eligibility of ITC is existence of that invoice's record in GSTR 2A/2B. The client's purchase and expense invoices' details are to be matched and reconciled. Certain issues faced:

a. Absence of Records/ Duplication of Records

It has happened many times that while reconciling data of GSTR 2A/2B, certain invoices which exist in GSTR 2B, simply aren't recorded in books of accounts. This happens for multiple reasons, usually being – the client didn't receive the invoice, or failed to enter the transaction into the accounting software, or the goods haven't been received or any other dispute. Duplication of records means the same invoice being recorded twice in the accounting software. This can be due to any posting error or existence of multiple ledger masters with similar names. Either case, even though by GST law such ITC may be eligible, but in GST workings, it may not be considered eligible for that particular period. Hence suitable accounting entries may be passed and/or altered.

b. Mismatch in Details

This happens especially in case of suppliers who deal in non-durable/ somewhat perishable/ articles meant for human consumption, like FMCG or medicines. The manufacturer/ distributor may supply certain goods via its salespeople, who will deliver those goods to the wholesaler/ retailer. Some from those delivered goods may have defects like dented packaging, lost contents, etc. Some goods delivered may not be as per specifications of the purchase order. To avoid backlash from seniors and additional goods handling charges, enterprising salespeople will sell such rejected goods for cash in local markets and will change the particulars and amounts in the tax invoice by hand, to give effect of that rejection. However, this effect may not be done in the sales details of the manufacturer/ distributor's books and thereby the GSTR 1 filed by such people show inflated sales. Ensuring correct accounting of such invoices and thereby recording only the eligible ITC – GST amounts is essential.

c. Operation of Law

Data entry level accountants may not be well versed with the legal provisions pertaining to eligibility, ineligibility and reversal of ITC, like in case of Hire Purchase (when ITC is to be taken on or after the last installment), 180 days payment condition, etc. Just because any invoice is mentioned in GSTR 2A/2B, doesn't mean that ITC involved is eligible. Reversals of ITC, say for sale of capital assets, stock of goods written off, etc., in books, a reversal of ITC entry may also be passed (in the next year, till November) for such an invoice which was never visible in GSTR 2A/2B. Some clients also try to show certain personal expenditures as business expenses to claim ITC and Depreciation, one classic example being of mobile phone purchase. Here too, appropriate reversal accounting entries need to be passed.

d. Separate Record Maintenance

For all the invoices with any issue as discussed above, separate records need to be maintained, if possible then in the accounting software itself or in any other software or MS Excel. Lack of appropriate source data creates a separate set of issues – Table 8A details not matching with GSTR 2A, reconciling GSTR 2A with 2B, etc. wherein all data is from the same source i.e. GSTN database. Hence at least the books of the client should show a correct/ appropriate picture of state of ITC, what all was eligible, ineligible, reversed, claimed in next year, etc.

Availment and Utilisation of ITC

Again, practically, availment and utilisation of ITC can be understood better from the workings for GSTR 3B, Electronic Credit Ledger and Electronic Cash Ledger as available on the GST portal. Certain issues faced:

a. Creation and settlement of RCM liability

RCM (Reverse Charge Mechanism) is a concept wherein the recipient of goods or services is liable to pay GST on those transactions and then claim ITC. In books, appropriate accounting needs to be done to create RCM liability, show the payment via Bank account and transfer this to ITC – asset.

b. ITC availed in later period

For any reason, say, the client's supplier didn't file its GSTR 1 on time, or failed to mention the client's sale invoice, etc., the client can avail ITC only when details are mentioned/ amended. In such cases, in the balance sheet, all such ITC need to be shown under current assets till the time such ITC is availed and utilized. Care should be taken that such ITC shouldn't be otherwise ineligible, say blocked credit.

c. ITC couldn't be availed in later period

Say, the client's supplier failed to mention the client's sale invoice, etc., till the end of November the next year, such ITC asset should be reversed/reduced in the books of accounts as it cannot be availed in GSTR 3B.

d. Closure entries

Depending on the accounting policies, either during the year or at the end of year while finalizing and closing books of accounts, appropriate closure entries need to be passed to reflect the correct state of ITC asset. Mathematically, any closing ITC in current assets can be:

ITC asset balance of March/ closing period as per the Electronic Credit Ledger (+) ITC on those invoices not yet visible in GSTR 2A/2B (+) ITC to be claimed/ reclaimed by operation of law (–) Such ITC asset of last year which couldn't be availed in GST returns in current year.

General issues

There are multiple other general issues in ITC with respect to Book keeping. Listing a few below:

- Incorrect GSTIN in ledger masters hindering the automated ITC mismatch process.
- Lack of supporting documents such as E-way bill or delivery challans.
- Verification of e-invoicing applicability to client's supplier.
- Improper stock maintenance resulting in some stock items in negative values after sales – leading to scramble for purchase records of such stock items.
- Lack of follow-up from client to its supplier, especially for invoices yet to be mentioned in their GSTR 1.

ITC (or GST in general) in book keeping is a task requiring good knowledge of GST law, proper record keeping of source documents such as invoices, reconciliations with GSTR 2A/ 2B, RCM accounting and others. Unfortunately, data entry accountants may not be well versed with all these requirements. Proper education, training and guidance needs to be provided.

Thank you!



GST ON GAMING INDUSTRY

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A. Introduction

Significant boom in the gaming industry over last few years in India, on global basis India is now leading nation in respective industry. The rise of smartphones and the increasing availability of high-speed internet at reasonable prices has made it easier for people to access online games. The phase on which industry is growing has a huge economical potential. The gaming industry is struggling with an unresolved issue of GST over the last years, which would impact the growth of nation in form of tax collection and industries sustainability. The economic potential of the Online Gaming (herein referred as “OG”) industry can be boosted as increase in the bandwidth of network connectivity as well as increase in phone users which turns to ease access to the OG.

The tax side for OG in India is complex and constantly evolving with the availability and constant innovation of different formats within OG. The regulatory framework and indirect tax regime in India, both in the pre-GST as well as post-GST regime, always made a distinction between games of chance involving betting and gambling activities vis-a-vis games of skill while determining the regulatory status and the indirect tax treatment involving rate of tax and value of supply respectively.

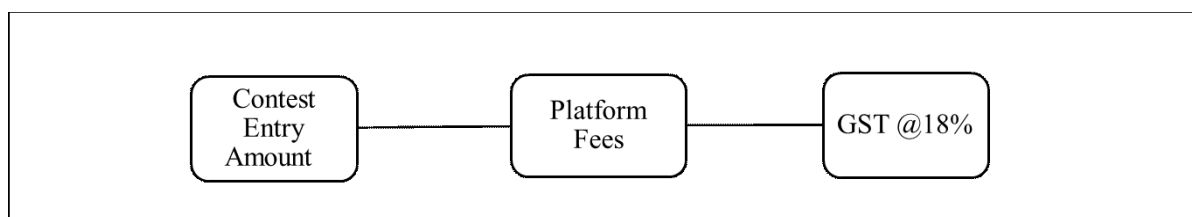
The Courts have interpreted the term 'betting and gambling' to mean games of chance which are covered under the Public Gambling Act, 1867 or state gambling/betting laws. Further, several courts have held that games of skill do not amount to gambling/betting and are considered as a legitimate (lawful) business activity.

As per **Schedule III of the CGST Act, 2017**, “actionable claims other than lottery, betting and gambling and horse racing” are neither treated as a supply of goods nor a supply of services. Accordingly, actionable claims arising from online games of skill are neither treated as a supply of goods nor a supply of services. Under the GST law, as it stands today, GST cannot be levied on actionable claims arising from online games of skill and accordingly, GST of 28 percent is not levied on the Contest Entry Amount (CEA), rather, 18 percent GST is levied on the Gross Gaming Revenue (GGR). Further, the online skill gaming services the GST is levied at 18 percent on the Platform Fee (PF)/Gross Gaming Revenue (GGR), a charge applied by the platform to facilitate play between users.

To Summarize,

Particulars	Game of Skills	Game of Chances
Meaning	One where the outcome is dependent on the expertise, practice, and experience of the player and not merely on chance	Similarly to betting, gambling, and horse racing.
Taxation	Lower tax rate @18% on platform fees	Higher tax rate @ 28% on total value
HSN Code	998439	999692
Examples	Rummy, Dream 11.	-

B. GST taxing policies on the online gaming industry



At present, the GST is charged at 18 percent on GGR. However, the amendment increased the rate as well as the value of supply to 28 percent on CEA. The reason behind the amendment is that increase in tax lead to an increase in the total revenue, as the OG industry is profitable, and since GST is a pass-through tax to consumers, the increase will not affect the industry and consumers.

50th GST Council Meeting, held on 11th July 2023 passed a crucial decision for the online gaming industry, casinos and the horse racing businesses. The GST Council with the help of the Group of Ministers, made recommendations on the imposition of GST on online gaming, as well as putting an end to the debate over “games of skill or chance.” **28% GST shall apply to online gaming, casinos and horse racing on the full face value.**

Based on the revenue, cost and consumer behaviour related data and assumptions shared by the industry, the report estimates that the change in the GST regime for online gaming services from the current 18 percent on GGR to 28 percent on CEA may render the OG industry not feasible as the increase in GST burden. The change in valuation effectively taxes the OGIs above and beyond their revenue source.

C. How to Calculate GST?

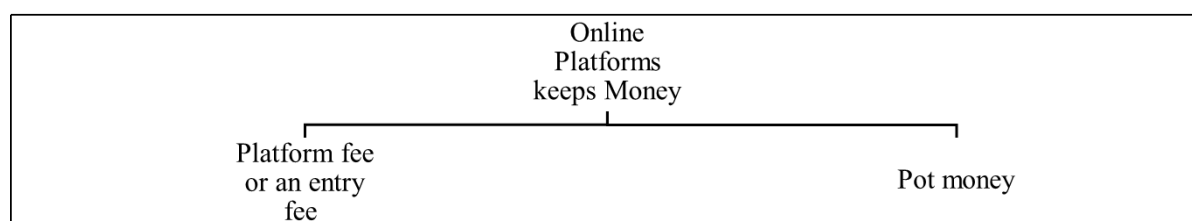


Illustration: If 10 rummy players plan on betting Rs.500, platform fees 100 each player and the platform charges 10% as a fee.

Game of Skill	Game of Chance
a. Platform fees= Rs. 100* 10 participants* 10%charge	a. Platform fees= Rs. 100* 10 participants* 10%charge
b. Platform Fees= 100	b. Platform Fees= 100
c. GST Rate Applicable @18%	c. GST Rate Applicable @28%
d. GST Chargeable= 100*18%= 18	d. GST Chargeable= 100*28%= 28

The Government of Ministries amended to distinct the classifying online games into skill or chance. Instead, it made the following recommendations:

Flat GST rate of 28% on all online games, including skill games. Further, this rate will be chargeable on a 'gross revenue' basis, i.e., on the total stake value and not simply on the platform fee paid.

If, in the previous example, the gaming platform charges 28% GST, then the tax becomes:

GST Rate Applicable @28%

GST Chargeable = $100 \times 10 \times 28\% = 280$

New Rule 31B was introduced to help determine the value of supply for online money gaming consideration. As per this rule, the value of supply would be the amount deposited or paid/payable with the supplier in the form of money or money's worth including a virtual digital asset by or on behalf of the player. Further, the amount returned or refunded shall not be deducted/ nor reversed from the total face value amount of online money gaming.

Amendment in Section 24 of the CGST Act, 2017 is proposed to mandate the obligation to get registered in terms of the Indian GST Laws for the persons providing online money gaming services from a place outside India.

Generally, in the case of import, the recipient is liable to pay GST under the reverse charge mechanism, and the entity situated outside India is not required to take a GST registration. However, the Government for the 1st time has introduced registration on a foreign entity if it is supplying online money games to a person in India.

D. Issuance of notices under GST to Online Gaming Companies

Recently, online gaming companies are in receipt of notices in Form GST DRC-01A alleging that games wherein both skill and chance are involved such as rummy, poker etc. is predominately a game of chance and therefore will be treated as 'betting' or 'gambling'. Hence, the same is outside the purview of Schedule III to Central Goods and Services Tax Act (hereinafter referred to as CGST Act) and are liable to GST @ 28% on full betting amount.

E. Effect of change in rate in OG Industry

Currently, the gaming companies are discharging GST on platform fee charged to players. Hence, there will a substantial increase in the GST liability if online money games are treated as 'betting and gambling'.

1. Consumer shift to other platforms:

The increase in the tax rate and value of supply may lead to a consumer shift from domestic legitimate platforms to offshore online illegitimate platforms.

2. Reduction in GST revenue collection:

The tax revenue collected from the increased rate of 28 percent on CEA is projected to reduce over the years. This significant reduction in tax revenue can be attributed to factors, such as the consumer shift to offshore platforms and potentially less participation in the regulated domestic market.

3. Gaming start-ups leading to job losses:

The increase in tax liability on the online gaming industry is expected to have bad impact, specifically for the emerging start-ups in the sector.

4. Degrowth of the industry:

To cope with the increased tax liability, the industry may have to reduce costs. While, measuring the effect of an increase in indirect tax on the industry, it is important to understand its potential economic effects, industry competitiveness, supply chain, and inflation.

F. Exception to general rules:

Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016 ("Nagaland Act") expressly recognises virtual team selection games and virtual sport fantasy league games **as games of skill**.

G. Some Supporting Case Laws

1. In **Gurdeep Singh Sachar vs Union of India and Ors**, the Bombay High Court ruled that GST is not applicable on the player's entire deposit, but only on the consideration collected for the supply of goods or services within the platform.
2. **Varun Gumber v. Union Territory of Chandigarh and Ors**, the Supreme Court of India (SC) found that Dream 11 was a game of skill, and such games aren't covered under the Public Gambling Act.
3. A Division Bench of this Court in **Chandresh Sankhla Vs. State of Rajasthan & Ors.-D.B. Civil Writ Petition No.6653/2019** decided on 14.02.2020 in respect of a similar company Dream11 which also provided gaming services online held that the issue is no longer res-integra (a case) and as such gaming services are not in the nature of betting/gambling.
4. **Myteam11 Fantasy Sports Pvt. Ltd. v. Union of India**, D.B. Civil Writ Petition No. 1100 of 2023, decided on 18-1-2023, court satisfied that some of the games offered by the petitioners online have already been held to be games of skill rather than that of chance or that of betting/gambling.

H. Conclusion:

It can be seen that an increase in tax liability from 18 percent on GGR to 28 percent on the CEA would result into a significant decline in the tax revenue within Further, substantial differences are observed in the tax revenue as compared to current taxation structures. Thus, this would gradually result to a decline in the proportion of GST revenue generated by the government and would impact the overall revenue collection. Thus, a thoughtful approach to taxation under GST, considering industry dynamics, competitiveness, can help maintain a sustainable and better online gaming eco-system in India.



SECTION 17 OF CGST ACT, 2017

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GST(Goods & Service Tax); the term which is known to almost all the people associated with Financial Markets is growing expeditiously right from 1st July 2017 till date. As per the Latest news, GST of 1.72 Lakh Crore Rupees was collected by the Government marking its pinnacle to the chart in October 2023. While calculating this GST, the most important part is Apportioning the eligible Input Tax Credit (ITC) available from total ITC. Section 17 deals with Input Tax Credit Apportionment and Blocking of Ineligible GST Credits. To avoid cascading effect of taxes and provide seamless flow of ITC in GST, this section gains its importance. Let us learn about Section 17 of CGST Act in an incisive way.

Section 17(1) states that in case any Registered Party (Person/Firm/Company/Body Corporate/etc.) has ITC which is not fully related to the business that he/she/it conducts, then only that proportionate ITC on Inward Supplies which relate to the furtherance or ordinary course of business shall be availed as Eligible ITC. The remaining ITC which does not relate to the business will be ineligible or blocked. The method of apportionment is prescribed under **Rule 42 and Rule 43** of the CGST Rules. Rule 42 deals with 'Distribution of ITC on Inputs and Inputs Services' whereas Rule 43 deals with 'Distribution of ITC on Common Credits of Capital Goods'.

For example, if Mr. X, a Registered Person, runs an Ice-Cream Shop. He purchases 100 Ice-Creams worth Rs.1,000/- on which GST @18% paid by him is Rs.180/-. Out of 100 quantity, he used 10 Ice-Creams for his personal use. So as per Section 17(1) r.w.s. 17(5)(g), such ITC pertaining to personal purpose is blocked. Thus, even though he may get coolness from inside, he won't get coolness of ITC from GST!

Section 17(2) states that any Registered Party (Person/Firm/Company/Body Corporate/etc.) that has ITC on inward supplies which are partly related for making Taxable or Zero-rated Supplies under GST and partly related for making Exempt Supplies under GST, then only proportionate ITC on Inward Supplies which relate to the Taxable or Zero-rated supplies shall be availed as Eligible ITC. The ITC on Exempt supplies will be ineligible. Zero-rated Supplies include Exports Supplies or SEZ Supplies which are also allowed.

As per Section 2(108) of CGST Act, *“Taxable supply” means a supply of goods or services or both which is leviable to tax under this Act.*

As per Section 2(47) of CGST Act, *“Exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply, (Non-taxable Supply means Supply that is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act)*

Zero Rated Supplies are *Exports supplies or supplies to SEZ that do not attract any GST.*

Section 17(3) The value of an exempt supply under subsection (2) shall be accordingly and shall also include supplies where the person is accountable for the tax on the basis of reverse charges, transactions in securities, the sale of land, and, subject to clause (b) of paragraph 5 of schedule II, the sale of a building. [Explanation: For this subsection, the term “value of exempt supply” shall not include the value of any activities or transactions as mentioned in Schedule III, except those listed in said Schedule's paragraph 5]

Section 17(4) is applicable only to Banking Companies and NBFCs wherein they have an option to either choose the method of apportionment: (I) As per the provisions of Section 17(1) and (2) along with Rules 42/ Rule 43, or (II) Rule 38 of CGST Rules.

Rule 38:

As per Rule 38, every month, Banking Companies or NBFCs can claim 50% of the eligible ITC on the Inward Supplies (inputs, capital goods and input services) in that particular month and ignore the ITC ineligible u/s 17(5) or

ITC used for other than business. But 100% ITC is available on Inter-Bank supplies i.e. Supplies within the same entity but different registrations which can be interpreted as different branches of the same bank. But once this Option has been availed, the same cannot be changed during the said Financial Year.

Now comes the Capstone of Section 17: Blocked Credits u/s Section 17(5)!

Section 17(5) in the CGST Act begins with the following: “*Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18...*” This means that Section 17(5) will over-rule/over-ride the provisions of Section 16(1) i.e. Eligibility and conditions for taking input tax credit and Section 18(1) i.e. Availability of credit in special circumstances.

Every registered person in GST always desires to claim all the ITC available to the entity; whether used for business or not. But the Government is also very smart with respect to giving us the benefits of ITC against our Liability. Section 17(5) deals with some Input Supplies wherein the ITC is BLOCKED (ineligible) to be availed. Here is the tabular representation of the Section 17(5):-

Section	Particulars of Blocked Credits	Proviso's (Eligible ITC)
17(5)(a)	ITC on Motor Vehicles used for Transportation of person having capacity less than 13 passengers (including driver)	If used for further supply of such vehicles, or providing training for driving, or transportation of person, if used for goods transportation
17(5)(aa)	ITC on Aircrafts and Vessels	If used for further supply of such vehicles, or providing training for flying aircrafts or navigating vessels, or passenger transportation, if used for goods transportation
17(5)(ab)	ITC on Ancillary Services like Insurance, Repairs, etc. for vehicle as mentioned in 17(5)(a) and (aa) above	Same as 17(5)(a) & (aa) above + if such person deals in Insurance of the said vehicles as his business or is engaged in manufacturing of the said vehicles
17(5)(b) {b=beverages or beauty}	(i) ITC on Food & Beverages, Outdoor Catering, Beauty Treatments, Life/Health Insurance, Renting or Hiring of Motor Vehicles or Aircrafts except used for purposes as per Section 17(5)(a)/(aa)	If such Inward Supplies as mentioned in (i) are used for making same Outward Supplies by Registered Persons
---do---	(ii) Membership of Club, Health and Fitness Centers (iii) Employee Travel Benefits	ITC in respect of goods or services or both as mentioned in (iii) shall be available where it is required that an employer offer the same to its workers under any Law currently in effect.
17(5)(c) {c=construction}	ITC on Works Contract Services for Repairs, Additions, Construction, Renovations, etc. of Immovable Property	Construction of Plant & Machinery*, or if used for further supply of such services, or such services use for Movable Property
17(5)(d) {d=development}	Same as 17(5)(c) above; here the immovable property is developed by the registered party himself/herself/itself	Same as 17(5)(c) above

Section	Particulars of Blocked Credits	Proviso's (Eligible ITC)
17(5)(e) {e=ease in Tax for CSD}	ITC on Composition Levy Inward Supplies. (Simple reason: If you pay less outward tax on supplies:1% or 5%, even government will not give ITC on inward supplies as specified u/s 10(4) of CGST Act)	-
17(5)(f) {f=foreigner}	ITC on inward supplies of Non Resident Taxable Person (NRTP)	If such NRTP imports any goods (not services) to India
17(5)(g) {g=ghar}	ITC on inward supplies utilized for home consumption (simple reason: if not used for business purpose, no	-
17(5)(h) {h=happy gifts}	ITC on goods received as gifts, free samples, stolen, loss by theft, destroyed, etc.	-
17(5)(i) {i=Interest & Penalty}	ITC on Tax paid u/s 74, 129 or 130 (misrepresentation of facts, fraud, tax evasions, etc.)	-

Plant and Machinery, here means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports. But it specifically excludes a) land, building or any other civil structures; b) telecommunication towers; and c) pipelines laid outside the factory premises.

So this is about Section 17 of CGST Act in a concise way. I hope this helps you all to know about apportioning the Eligible ITC and not considering Blocked or Ineligible Credits while filing GSTR-3B! Thank You...



ARTICLE ON INTERPLAY OF CUSTOMS AND GST

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Before 2017, in India, there used to be many indirect taxes that were levied on goods or services or both. But with the introduction of GST, many indirect taxes like VAT, CST, and Service Tax got subsumed. But GST has not subsumed the Customs Law. Post GST, The Quantum of the Customs Duties is still as per the Customs Act, 1962 and The Customs Tariff Act, 1975, and related Customs Rules, Notifications, Circulars, case Laws and Annual Union Finance Acts. Moreover, the Customs Tariff Act, 1975 contains two Schedules. Schedule 1 gives classification and rates of duties for imports of goods into India. Schedule 2 gives classification and rates of duties for export of goods from India.

Before proceeding further, we should first deeply understand the nature of GST and Customs Law. As GST is a tax levied on the supply of goods and services, while Customs is a duty/tax levied on the import and export of goods. In GST Regime, CGST (Central Goods and Services Tax) and SGST (State Goods and Services Tax) is levied on the intra-state supplies of goods and services, whereas IGST (integrated Goods and Service Tax) is levied on inter-state supplies of goods and services and sometimes cess is also being levied on supply of goods and services under GST. But, on the other hand, in Customs Regime, there are duties such as Basic Custom Duty, Social Welfare Cess leviable as per the Customs Act, 1962 and the Customs Tariff Act, 1975. Additionally, there are other duties in Customs which may be leviable on the import or export of goods such as Anti-Dumping Duty, Safeguard Duty, Countervailing Duty, Road and Infrastructure Cess, Health Cess, Agriculture Development Cess etc.

Similarly, one may observe that there are many changes made in Customs law with the introduction of GST. Various sections of the Customs Act, 1962 and the Customs Tariff Act, 1975 are amended and lots of interaction between Customs and GST is being observed. There are some of the key areas where the provisions of both the Acts are simultaneously attracted or not attracted, and such areas are none other than the areas of interplay between Customs and GST. Some of the areas of the interplay of GST and Customs are given as under:

1. **Import of Goods** – When the goods are imported into India, then the importer is required to pay both Customs Duty and GST. One can understand the implications of GST and Customs from the example given below:

The assessable value of imports is Rs 2,22,000. Assuming, BCD (basic custom duty) is @ 10%, IGST @ 18% and SWS @ 10%. Following would be an example of calculation:

Particulars	Amount (Rs.)	Amount (Rs.)
Assessable Value of Imports		2,22,000
(+) Basic Custom Duty (10%)	22,200	
(+) Social Welfare Surcharge (10% of Basic Custom Duty)	2,200	24,400
Total Value for levy of IGST		2,46,400
(+) IGST @ 18%		44,356
Total Cost of Imports		2,90,776

From the above example, we can conclude that the Custom Duty is levied on the value of goods, while the GST is levied on the value of goods and customs duty. Also, one can easily observe that GST has a cascading effect on the customs duty.

2. **Export of Goods** – When the goods are exported from India, then the exporter is exempt from paying Customs Duty on most of the exported products. Sometimes, the export duty is leviable on the Exports of certain goods by the Government like Indian Govt. imposed high export duty on export of onions during August 2023 to cut down the inflation which have occurred due to shortage of supply in domestic market or other factors. Moreover, as per Section 16 of the IGST Act, 2017, the export of goods and services would be termed as Zero-rated Supply. And a registered person making zero rated supply shall be eligible to claim refund of unutilized input tax credit on supply of goods and services, without payment of IGST, under a bond or Letter of Undertaking (LUT) subject to certain conditions as per section 54 of CGST Act, 2017. Also, a registered person has the option to pay IGST and claim refund of such IGST paid as per the Section 54 of CGST Act, 2017 and the relevant rules made thereunder.
3. **Import of Services** – Section 2(11) of the CGST Act, 2017 defines the term 'import of services'. The import of services from the foreign supplier to the Indian recipient and the place of supply is India, this would be fit into the definition of import of services in India. The importer of services would be required to pay IGST on reverse charge basis. On the other hand, Customs are not applicable to services as Customs are only applicable to goods.
4. **Import of Goods with Ancillary Services** – If the goods are imported into India with ancillary services attached to such goods, then GST would be levied on both goods or services whereas Custom Duty will be leviable on the supply of goods and not on services. For example, Mr. Ashwin imports 5 laptops for Rs. 2,00,000 (inclusive of Insurance charges of 5 laptops of Rs. 50,000), then the total cost of imports of laptops with insurance charges are as follows:

Particulars	Cost of Laptops (A) (Rs.)	Cost of Insurance (B) (Rs.)	Total Cost of Imports (C)=(A)+(B) (Rs.)
Assessable value of Imports (Given)	150000	50000	200000
(+) Basic Custom Duty (10%)	15000	-	15000
(+) Social Welfare Surcharge (10% of BCD)	1500	-	1500
Total Value for levy of GST	166500	50000	216500
(+) IGST @ 18% of 216500			38970
Total Cost of Imports			255470

From the above example and calculation, we can see that custom duties are only being levied on the value of goods (laptop) whereas GST is being levied on both goods and services at the rate of principal supply (in our example, laptop) as in our case, laptop and insurance services is a composite supply as per the Section 8 of CGST Act, 2017.

5. **Transactions with people registered under the various schemes in Foreign Trade Policy (FTP), 2023** - As per Foreign Trade Policy 2023, there are various schemes introduced for businesses to boost foreign trade in India such as Advance Authorization, Export Promotion Capital Goods (EPCG) etc.

- i. As per the Advance Authorization Scheme, the exporters can import inputs without paying customs duty subject to certain conditions. But GST is levied on such imports as it would be considered as deemed exports for the supplier as per Notification No. 48/2017-Central Tax dated 18.10.2017. The refund of such IGST can be claimed by the supplier or the recipient as per the Section 54 of CGST Act, 2017.
- ii. Transactions with EOU – The Foreign Trade Policy has defined the term Export Oriented Unit (EOU). EOU are those units undertaking to export their entire production of goods and services (except permissible sales in domestic tariff area).

Transactions	GST Leviable or Not	Customs Leviable or Not
EOU to EOU	Any supply of goods by EOU to another EOU is termed as 'Deemed Export' as per Notification No.48/2017-CT dated 18.10.2017 and refund of such IGST can be claimed as per Section 54 of CGST Act, 2017 and relevant rules made thereunder.	As per Para 1(4b) of the Notification No. 52/2003 – Customs (Tariff) dated 31.03.2003, any supply of goods to EOU is exempt from Customs Duty.
EOU to DTA (Domestic Tariff Area)	EOU is allowed to do only permissible sales and on such sales IGST is levied.	Custom Duty is levied on supply of goods from EOU to DTA.
EOU to SEZ	Supply of goods or services or both to SEZ for authorized operations are termed as Zero-rated Supply as per Section 16 of IGST Act, 2017.	As per Para 1(4b) of the Notification No. 52/2003 – Customs (Tariff) dated 31.03.2003, any supply of goods to EOU is exempt from Customs Duty.
EOU Exporting Goods	Export of goods is also termed as Zero-rated Supply as per Section 16 of IGST Act, 2017.	No Customs Duty is leviable at large (except in such cases where export duty is applicable to notified goods.)

The Customs tax and GST implications on the supply of goods by EOU are as follows:

Transactions	GST Leviable or Not	Customs Leviable or Not
DTA (Domestic Tariff Area) to EOU	Any supply of goods by DTA/SEZ to EOU is termed as 'Deemed Export' as per Notification No.48/2017-CT dated 18.10.2017 and refund of such IGST can be claimed as per Section 54 of CGST Act, 2017 and Rule 89 of CGST Rules.	No Custom Duty is Applicable when goods are supplied by DTA to EOU.
SEZ to EOU		As per Rule 46(13) of SEZ Rules, 2006, SEZ can transfer/supply goods to EOU without payment of duty.
EOU Importing Goods	IGST is exempted as per the Notification No. 52/2003 – Customs (Tariff) dated 31.03.2003 and Foreign Trade Policy, 2003.	Import by EOU is exempt from Customs duty as per the Notification No. 52/2003 – Customs (Tariff) dated 31.03.2003.

- iii. As per EPCG (Export Promotion of Capital Goods) Scheme, the exporters can import capital goods (except those specified in Negative List in Appendix 5F of FTP, 2023) for preproduction, production, or postproduction at zero rate of custom duty. Capital goods imported under EPCG scheme for physical exports are exempt from IGST and Compensation Cess. Moreover, one may need to comply with the provisions of FTP for import of capital goods under EPCG Scheme.
6. **Transactions with Special Economic Zone (SEZ)** – As per SEZ Act, 2005, SEZ Units are the special business areas which are being designated in the country that have different business and trade regulations (it also includes Free Trade and Warehousing Zone – which is also defined in Section 2(n) of SEZ Act, 2005). They are being set up as per the provisions of the SEZ Act, 2005 and SEZ rules, 2006.

The Customs tax and GST implications on the supply of goods to SEZ are as follows:

Transactions	GST Leviable or Not	Customs Leviable or Not
DTA to SEZ	Supply of goods or services or both to SEZ for authorized operations are termed as Zero-rated Supply as per Section 16 of IGST Act, 2017.	No Custom Duty is leviable subject to certain conditions on supply of goods from DTA to SEZ.
EOU to SEZ		As per Para 1(4b) of the Notification No. 52/2003 – Customs (Tariff) dated 31.03.2003, any supply of goods to EOU is exempt from Customs Duty.
SEZ Importing Goods		No Customs Duty is leviable as per Section 26 of SEZ Act, 2005.
SEZ to SEZ		As per Section 53 of the SEZ Act, 2005, No Custom Duty is leviable

The Customs tax and GST implications on the supply of goods by SEZ are as follows:

Transactions	GST Leviable or Not	Customs Leviable or Not
SEZ to EOU	Any supply of goods by SEZ to EOU is termed as 'Deemed Export' as per Notification No. 48/2017-CT dated 18.10.2017 and refund of such IGST can be claimed as per Section 54 of CGST Act, 2017 and relevant rules made thereunder.	As per Rule 46(13) of SEZ Rules, 2006, SEZ can transfer/supply goods to EOU without payment of duty.
SEZ to DTA	IGST is levied on supply of goods from SEZ to DTA.	As per Section 30 of the SEZ Act, 2005, Custom Duty is levied on supply of goods from SEZ to DTA.
SEZ Exporting Goods	Export of goods is also termed as Zero-rated Supply as per Section 16 of IGST Act, 2017.	No Customs Duty is leviable at large (except in such cases where export duty is applicable to notified goods.)

Tax implications on the Supply of Services by/to SEZ – Supply of Services is outside the purview of Customs Law. Whereas, in the GST regime, any supply of goods or services or both to a SEZ unit for authorized operations is termed as zero-rated supply as per Section 16 of IGST Act, 2017. Moreover, any supply of service by SEZ to EOU or DTA would be subject to GST as per the provisions of the GST Law.

Overall, the interplay of GST and Customs is a very complex but interesting topic. As a tax professional, one needs to be aware of both Customs Law and GST Law. The proper knowledge of these Acts and the areas of interplay rendered by the tax professionals would help the businesses (Clients) to boost the foreign trade in India.



REVERSE CHARGE MECHANISM

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Introduction :

The concept of Reverse Charge Mechanism was introduced in erstwhile service tax laws. Earlier, Service tax, Excise, VAT etc. were levied on the sale of goods and services at each stage of the supply chain, However, tax fraud and evasion this led to substantial revenue losses. Since there were inherent vulnerabilities in the earlier system, the Reverse Charge Mechanism was introduced.

Generally, indirect tax is payable by the supplier of the goods or service, but under Reverse charge mechanism the liability to pay tax has shifted to the recipient. The objective of shifting the burden of GST payments to the recipient is to widen the scope of levy of tax on various unorganized sectors, to tax the import of services and exempt specific class of supplier of goods or services from payment of such taxes. The concept of Reverse charge mechanism is incorporated under GST, but in GST regime, the Act not only covers supply of certain service but it also covers supply of certain goods under RCM.

When is Reverse Charge Applicable?

Section 9(3), 9(4) and 9(5) of Central GST and State GST Acts govern the reverse charge scenarios for intrastate transactions. Also, sections 5(3), 5(4) and 5(5) of the Integrated GST Act govern the reverse charge scenarios for inter-state transactions. Let's have a detailed discussion regarding these scenarios:

- A. Supply of certain goods and services notified by the CBIC.**
- B. Supply from unregistered dealer to registered dealer.**
- C. Supply of services through an e-commerce operator.**
- D. Import of Goods or services from outside India into India.**

Who should pay GST Under RCM?

The liability to pay under RCM is on the recipient of the goods or services. As per the provisions of GST law, if the person supplying the goods / services is registered, then he must mention in the tax invoice whether tax is payable under RCM or not. Nevertheless, the liability would still remain on the recipient even if the supplier is unregistered / does not issue an invoice.

The following points should be kept in mind while making GST payments under RCM:

- The recipient of goods or services can avail of the ITC on the tax amount paid under RCM only if such goods or services are used for business or furtherance of business.
- A composition dealer should pay tax at the normal rates and not the composition rates while discharging liability under RCM. Also, they are ineligible to claim any input tax credit of tax paid.
- GST compensation cess can apply to the tax payable or paid under the RCM.

Supplies of goods on which GST is to be paid under RCM

Sr. No.	<u>Description of supply of goods</u>	<u>Supplier of Goods</u>	<u>Recipient of goods</u>
1	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3	Tobacco leaves	Agriculturist	Any registered person
4	Raw cotton	Agriculturist	Any registered person
5	Used vehicles, old and used goods, waste and scrap	Central Govt., State Govt., Union Territory, Local authority	Any registered person
6	Cement	Any unregistered supplier	Promoter/builder

Supplies of Services on which GST is to be paid under RCM

Sr. No.	<u>Description of services</u>	<u>Supplier of services</u>	<u>Recipient of Services</u>
1	Legal services provided by advocates or firm of advocates	Any individual advocate including senior advocate or firm of advocates.	Any business entity located In taxable territory
2	Service provided by way of sponsorship service to any body corporate or partnership firm	Any person	Any body corporate or partnership firm
3	Service provided by insurance agent	An insurance agent	Any person carrying on insurance business, located in the taxable territory
4	Security service (service provided by way of supply of security personnel) provided by other than body corporate	Any person other than body corporate	Any registered person located in taxable territory
5	Supply of services by the member of overseeing committee to reserve bank of India	Member of overseeing committee constituted by RBI	RBI
6	Any service supplied by any person who is located in non-taxable territory to any person other than a non-taxable online recipient	Any person located in a non-taxable territory	Any person located in taxable territory other than non-taxable online recipient
7	Import of services	Any person located in non-taxable territory	Any person located in taxable territory other than non-taxable online recipient

Sr. No.	Description of services	Supplier of services	Recipient of Services
8	Supply of services other than services by way of transfer of development rights (TDR), long term lease of land (30 years or more) against upfront payment (in the form of premium, salami, development charges etc.) or FSI (including additional FSI) by an unregistered person to a promoter for construction of project	Any person	Any promoter
9	Goods transport agency (who has not paid GST @12% inserted vide notification No. 22/2017 integrated tax rate dated 22.08.2017) in respect of transportation of goods by road	Goods transport agency	Any registered factory , any registered society, any co-operative society established by law, any person registered under CGST / SGST / IGST / UTGST act , any body corporate, any partnership firm whether registered or not under any law, casual taxable person
10	Transfer or permitting the use or enjoyment of a copyright relating to music, an author, composer, photographer and artistic work	Author or music composer, photographer etc.	Publisher, music company , producer
11	Radio taxi or passenger transport services provided through an electronic commerce operator	Taxi driver or rent a cab operator	Electronic commerce operator
12	Service supplied by a director of a company /body corporate to the said company /body corporate	Any director of a company/ body corporate	Company or body corporate located in a taxable territory

13. Renting of Motor Vehicle ([Notification No.29/2019 dated 31.12.2019](#))

	Description of service	Supplier of service	Recipient of service
REVISED Provision	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient provided to a body corporate	Any person other than body corporate who supplies the service to a body corporate and does not issue an invoice charging CGST @6% to service recipient	Any body corporate located in the taxable territory



CROSS BORDER TRANSACTIONS WITH IMPLICATIONS OF RELATED PARTIES:

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Introduction:

Cross-border transactions are basically any transfer of goods or services, or both, between two individuals or business entities in two different jurisdictions. Due to different jurisdictions being involved, many issues arise with regard to the tax considerations. It not only requires looking into tax laws on two different countries but also checking the tax treaties between the said countries.

Cross-border transactions and the role of GST on the same has always been a confusing topic. With the advent of globalization, cross border transactions between the nations have increased multi-fold. With such an increase, the ambiguities regarding GST implications on such transactions have also increased. The industry has always struggled with litigation for such transactions, as the GST Law has not precisely defined provisions.

Issues have also been observed in cases where foreign entity opens a branch in India under the same Trade Name as that of the parent. Two common transactions that occur in this scenario is that the parent allocates cost to the branch which is booked as an expense in branch's books and the second being any remittance of amount from the branch to the parent. In both these transactions, there remains a confusion as to whether to consider it as a supply.

In this article, we have tried to understand and simplify some such cross-border transactions and understand the issues in case related parties are involved:

1. Export of Goods:

- As defined u/s 2(5) of the IGST Act, 2017, “**Export of Goods** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.”
- Under the GST Law, export of goods and services is treated as a Zero rated supply. Zero rated supply does not mean that the transactions is exempted from GST but that the exporter will pay tax on such a supply at “0%” rate. However the issue arises as to the GST Input Tax that the exporter has to pay to its supplier in order to procure the inputs and/or input services pertaining to export. Since, effectively there is no GST liability on exports, credit of taxes paid on inputs/input services cannot be offset. Thus, in this regard the GST Law provides two options for exporter to claim refund of such Input Tax:
 - A registered person can export goods without the payment (EXPWOP) of GST, only after obtaining a Bond or Letter of Undertaking (LUT), by filing Form GST RFD-11 with the jurisdictional commissioner. If the exporter chooses to export through this option, he has to apply for a refund of the Input Tax so paid on inputs and/or input services after submitting the relevant documents with the GST Department.
 - However, in case the Exporter opts to export goods with payment of GST (out of his own pocket), the refund of same is auto populated on the ICE Gate portal on filing of relevant details in GSTR-1. (Shipping Bill No., Port Code, Shipping Bill date).

2. Export of Services:

- **Export of Services**” has been defined u/s 2(6) of the IGST Act, 2017. A supply of service can be said to be an Export of Service transaction if:
 - 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 in convertible foreign exchange 4[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 section 8;*

Hence, if all the above 5 conditions are met supply will be considered as an Export of Services which is a Zero rated supply.

- Additionally, for pt. v an exception has been provided by way of a clarification (vide. cbic-gst-circular-161-17-2021) that supply between parent and subsidiary will be allowed to qualify as an Export of Services transaction even though it is a mere establishment of distinct persons.
- Similar to export of goods, under export of services, the exporter can claim a refund for Input Tax paid, either by applying for a LUT or on payment of taxes, by applying with the GST Department.

3. Import of Goods (IMPG):

- Article 269A of the GST regime states that the supply of commodities or services or both, if imported into India, will be considered as supply under inter-state commerce or trade and will attract integrated tax.
- The importer of goods shall pay the requisite custom duties and IGST on the assessable value as per the Customs Act, to clear the goods from customs. The input tax so paid on IMPG is allowed to be claimed as Input Tax Credit. The same is auto-populated in GSTR-2B only after filing the Bill of Entry.

4. Import of Services (IMPS):

- The import of services is defined as the supply of a service by a supplier who is based outside the country, but the recipient of the services is based in India, and the place at which the service is supplied is also within the geographical boundaries of the country.
- As per Notification 13/2017 –CT (Rates) and 10/2017 –IT (Rates) dated 28-06-2017, GST on Import of Services has to be paid on Reverse Charge Basis.

5. Issues regarding taxation due to involvement of related parties:

- First let us understand what a related party is under the GST Law:

“Related party has been defined u/s 2(84) of the CGST Act, 2017.” A person shall be deemed to be a related party if it falls into any of the below categories:

- Officer or director of one business is the officer/ director of another business
- Businesses legally recognized as partners



- An employer and employee
- Any person who holds at least 25% shares in another company, either directly or indirectly
- One of them controls another directly or indirectly
- They're under common control or management
- The entities together control another entity
- The promoters or managerial persons are members of the same family.

Thus, if the parties involved in the transaction of export fall into any one of the categories, they will be treated as a related party.

- In both the above transactions of export, there arises an ambiguity about the valuation of the transaction, in case the same is done with a related party. Due to the relationship of the two entities, value of the consideration for any exports may be influenced. This in turn would result in lesser tax being paid to the government, as GST is charged as a percentage of the transaction value. Hence, to ensure that the tax is being paid correctly at arm's length price, GST Law has prescribed certain rules regarding valuation.
- **Valuation of transactions:** Taxability of transactions between related parties is also covered under Schedule I wherein transactions without consideration shall also be deemed to be a supply under GST. For this purpose, value of supply shall be considered to be the open market value in accordance with valuation rules.
- **Rule 27 of the GST valuation rules** explains that in case the transaction is not valued at arm's length price then the following methods needs to be adopted:
 - **Open Market Value** of such supply – Open Market value is the value of a similar transaction done between two unrelated parties. For e.g. X sells goods to Y (Related party) for 1,000 and to Z (Unrelated party) for 1,500. Hence, the Open Market Value will be 1,500 and B will have to pay tax on 1,500.
 - In case Open Market Value is not determinable, then value of **like and similar goods** needs to be considered. For e.g. If in the above example X does not sell to any unrelated parties then Open Market Value is not determinable. Hence, in such a scenario, the transaction should be valued by considering the value considered by another dealer dealing in such similar goods.
 - If it is not possible to value the transaction by any of the above methods, value can be determined by taking the **cost of production** of such goods as a basis.
- The above valuations rules have not clearly been structured leaving it open-ended and wide to interpretation. Terms like similar transactions, similar goods etc. don't clearly indicate what method is to be followed which leaves the valuation open to interpretation. This creates ambiguity and consequently, litigation.
- In case the two parties involved in the transaction of Import of Goods are related parties, the assessable value is determined as per Rule 3 of the Customs Valuation rules. Rule 3 explains that the in case if the two parties in the transactions are related parties, the assessable value will be investigated by a special branch under the Customs called as Special Valuation Branch (SVB).
- If the SVB determines that the assessable value is not genuine, the assessable value will not be acceptable and will be determined in one of the following methods (in the following order) :



- Value of Identical/ Similar Goods (As per rule 4 & 5)
 - Deductive Value Method (Rule 7)
 - Computed Value Method (Rule 8)
 - Best Judgement Method (Rule 9) – Residuary Method
- Schedule I of the CGST Act, 2017, states that if Services are imported from a related party in the course of furtherance of business even without consideration would still be treated as supply. Hence, tax would still be paid on reverse charge.

With globalization, borders have really lost significance in terms of business expansion. However, tax laws have not really globalized at the same pace which creates ambiguity and litigation. GST law is at a very nascent stage and has failed to envisage complexities involved in online supply of services/ goods, VDAs, digital assets, business structuring for global presence. Thus, the road to taxability of cross border transactions especially when related parties are involved is a challenge, the solution for which is yet awaited even after 6 years of GST.



GST NOTICES & SCRUTINY

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INTRODUCTION

GST Notices can be of many types- Show cause notice, Demand notice and scrutiny notice to mention a few. These are usually communicated by GST Department. The reason these notices are sent to the taxpayer is to remind or caution the taxpayer for any defaults being noticed or for prohibition of any GST Law. The department acts on the basis of any information collected on verification of taxpayer's GST returns filed or any information received from Government or any other third party.

A notice can be called by different names like show cause notice (SCN), scrutiny notice or the demand/ Notice issued against the taxpayer. The common grounds for receiving notices from GST Department are lapses on the part of the taxpayers such as not registering under GST, non-filing or any delay in filing of GST returns, non-payment of GST or short payment of GST, excess Input tax credit claims, Inconsistent declaration in GSTR-1 and e-way bill portal, Inconsistencies in reporting of Exports in GSTR-1 with information available on ICEGATE etc. Hence the taxpayer must be alert and vigilant while replying to such Notices and necessarily within the time limit prescribed. Any failure to do so can land the taxpayer in deep trouble.

Types of Notices

GSTR-3A

Default notice received by non-filers of GST returns in GSTR-1 or GSTR-3B. The time limit to reply is 15 days from the date of receiving notice and the taxpayer needs to file the particular GST Returns, which is yet to be filed along with late fees for the delay and interest on the GST liability, if any.

CMP-05

A Show cause notice which questions the eligibility of the taxpayer to be a composition dealer. The time limit to reply is 15 days of receipt of the notice, where the taxpayer has to justify the reasons as to why he should be eligible to continue under Composition Scheme.

REG-03

A notice which can be sent for clarification for the information provided in the application or documents needed for verification regarding GST Registration. Also, the same form for the notice is applicable for amendment of GST registration. The time limit to reply is 7 working days from the date of receipt of Notice.

ASMT-10

A Scrutiny notice for intimating discrepancies in the GST return after scrutiny along with tax, interest and any other amount payable such as late fees in relation to such discrepancy found in returns filed. The time limit for such reply is the prescribed time limit given in Show Cause Notice or a maximum time of 30 Days from the date of receipt of Notice. Here the taxpayer has to reply in ASMT-11 giving reasons for the discrepancies found in GST Returns.

ASMT-14

A show Cause Notice for assessment under section 63 stating the reasons for conducting the assessment on best judgement basis. These notice is generally sent to the taxpayer who has failed to obtain registration under GST or whose registration has been cancelled. The time limit to reply is 15 days from the date of receipt of Notice. The Assessee has to reply in written form and has to appear before the GST Department.

ADT-01

Notice for conducting audit by Tax authority under Section 65. Time limit to reply is the time prescribed in the notice. The taxpayer needs to attend in person as directed in the notice or produce records. If not, it is assumed that taxpayer does not possess books of accounts and proceedings will be initiated against him.

DRC-01

A Show cause Notice issued for demanding tax paid shortly or not paid with or without an intent to defraud. It is usually served along with a statement of details in DRC-02. The time limit to reply to such notice is 30 days from receipt of notice. The taxpayer needs to file the reply in Form DRC-03 for paying the amount of tax demanded in the notice along with Interest and penalty, if any applicable.

Some Modes of Receiving GST Notices

- The notice is either hand-delivered to the taxpayer or is sent by a courier by registered post or a speed post or a courier with an acknowledgement.
- Communication to the registered email address.
- Notice is made available on GST Portal and can be viewed by logging in.
- Publication in a regional newspaper being circulated in the locality of the Taxpayer.

The taxpayer is not required to act or reply to any notice or such Communication if it is received in any other modes rather than the above mentioned.

Reply to GST Notices

A reply can be submitted online through logging in GST Portal. If payment is necessary then it can be made in the next month's particular return or by making voluntary payment through DRC-03. In case the registered person fails to reply to Notice within stipulated time then he shall be liable for penalties and other proceedings under GST Law.

A taxpayer can authorize another representative or a practicing chartered accountant to look into the matters related to GST notices.

Scrutiny

In terms of GST it implies verification of correctness of information submitted in the GST returns filed by the taxpayer. It basically arises when the assessing officer suspects that the registered person has understated his income/ gross receipts or has underpaid tax liability arising on him, or is continuously filing Nil GST Returns. **Section 61** of CGST Act, 2017 contains provisions of scrutiny of GST Returns which empowers the proper officer to scrutinize the return and its correctness and accordingly initiate the proceedings.

Scrutiny Assessment Process


- Notice in ASMT-10
- Registered Person may accept and pay the Tax/ Interest
- If not then he may furnish his explanation in ASMT-11 (Within specified time limit)
- Proper Officer may accept the reply within 30 days from receipt of ASMT-11.
- Proper Officer may proceed further if he is not satisfied with the reply in ASMT-11.

The Tax Officer can take following actions such as

- Conduct a tax audit under section 65
- Conduct a special audit under section 66
- Survey/Inspection under section 67
- Initiate demand and recovery provisions.

Consequences of not responding to a Scrutiny Notice

If the registered person fails to reply to the Show cause notice or within stipulated time frame then the proper officer can take action under section 73 (Non-fraudulent) or section 74 (Fraudulent) and will issue an order demanding tax dues along with interest and penalty, if any.





Techni "Kal" ki Tayari...

TECH TIPS AND TECHNIQUES

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WHY NEED FOR TECH TIPS...?

Becoming technology savvy can help individuals improve their work performance and enhance their quality of life. In current world, it is pre-requisite for people to understand certain technical skills to accomplish their work responsibilities. By reviewing some key tech tips & techniques and ways to learn them, you can better determine which options can help you succeed.

SOME TECH TIPS & TECHNIQUES...!

1. USE TECH TO BEAT TECH: (Website Blocker-[StrictWorkflow](#))

Productivity enthusiasts will love Strict Workflow, a free browser plug-in loosely based on the Pomodoro (time management) Technique of working in focused bursts, followed by short breaks. It's a wonderful tool for timing work sessions and blocking distracting sites.

Most people know where features like silent mode or pause all notifications are on their phones, desktops and laptops, but you can go a step further with add-ons and website blocker [StrictWorkflow](#), which enforces a 25:5 minute workflow: 25 minutes of distraction-free work, followed by five minutes of break.

(These timing can be altered as per our specification)

2. USE GOOGLE SEARCH OPREATORS:

Google search operators are special commands that extend the capabilities of regular text searches on Google. These search commands help you navigate specific websites or narrow down your search results. For instance, the “site:” operator returns specific results from a particular website.

Eg: Typing “site: icai.org taxation”, will display all articles that contain the taxation keyword published on the website.

3. TAP INTO THE POWER OF BROWSER EXTENSIONS:

Extensions are like mini apps that add functionality to your browser, enhancing productivity and customization with right combination of extensions, making your tech life more enjoyable.

Few of the extensions are Ad blocker, time tracker, language translators etc.

4. BETTER MANAGE YOUR BROWSER TABS: (OneTab)

If you're opening a lot of different tabs in Chrome and your computer is burning up, try using [OneTab](#) to convert all of your tabs into a list. It will help you to save up to 95% memory and reduce tab clutter.

5. WEB BROWSING TRICKS:

Automatically add “www.” and “.com” to a URL, you can cut off a couple of seconds typing in a URL by simply pressing “Ctrl + Enter” after you type the name of the site.

Need “.net” instead of “.com”? Press “Ctrl + Shift + Enter” instead.

6. MAKE YOUR CALENDAR WORK HARDER:

Time is most valuable so Prioritizing time slots and adding it to the calendar becomes much easier to see, at a glance, what is to be achieved in a particular day all comes in calendar.

This can help you make necessary decisions and arrange according to the time and importance of work.

7. TAKE SCREENSHOT LIKE A PRO: (Snipping tool)

Using a snipping tool offers more functionality than manual screenshot capture methods like using PrintScreen key alone, as it provides more efficient ways for organizing and managing multiple simultaneously taken screenshots at once without needing any additional assistance from external image editing software applications.

To do this, Windows users should press “Start + Shift + S” to invoke the Snipping Tool and then use the mouse to select an area on the screen.

EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Speaker / Mentor	Attendance / Views
Saturday, 21st October, 2023	Student Committee	Final Countdown : Conquering the CA/ CS/ CMA Exams	Speaker : CA Prof. Bhushan Gosar CA Parth Shah Dr. Dipti Shah	65 participants

