

CBIC issues clarifications pursuant to the 50th GST Council meeting recommendations

18 July 2023



Summary

In light of the recommendations made by the Goods and Services Tax (GST) Council during the 50th meeting, the Central Board of Indirect Taxes and Customs (CBIC) has issued a series of circulars aimed at providing clarity on various tax-related matters. These circulars specifically address the concerns related to the taxation of services between offices located in different states, the tax implications on shares held in subsidiary companies by the holding company, the tax collected at source (TCS), the guidance on rectifying discrepancies in the Input Tax Credit (ITC) availed, and aspects concerning refund procedures.

Key clarifications:

- **Clarification on the taxability of services provided by an office of an organisation in one state to the office of that organisation in another state, both being distinct persons¹:**

Issue	Clarification
Input service distributor (ISD) registration for the head office (HO) for the distribution of common input services procured from a third party but attributable to the HO as well as the branch office (BO)	<ul style="list-style-type: none">• The common input services procured by the HO from a third party but attributable to both HO and BO or exclusively to one or more BOs:<ul style="list-style-type: none">➤ The HO can either opt to distribute such ITC by following an ISD; or➤ The HO can issue tax invoice u/s. 31 to the concerned BO for such common services attributable to the BO, and accordingly, the BO can avail ITC subject to Sections 16 and 17.➤ Therefore, an ISD is not mandatory.• If the HO opts for the ISD mechanism, then the HO is mandatorily required to take registration as an ISD.• Pertinently, only such ITC can be distributed by way of an ISD, which is attributable to the said BO, i.e., the input services have been received by such BO. Similarly, tax invoices can be issued to the BO only if such services have been provided to the concerned BO.
Valuation methodology to be adopted by the HO for issuance	<ul style="list-style-type: none">• The value of the supply of services declared in the invoice shall be deemed as

¹ Circular No. 199/11/2023-GST dated 17 July 2023

<p>of invoice to BOs where it is eligible for the full ITC</p>	<p>open market value (OMV) where the recipient BO is eligible for full ITC, irrespective of whether the cost of any particular component of such services, like employee cost, etc., has been included or not in the value of the services in the invoice.</p> <ul style="list-style-type: none"> • Where the HO has not issued a tax invoice to the BO in respect of any service rendered by the HO and full ITC is eligible to the BO, the value of such services may be deemed to be declared as nil by the HO to the BO and may be taken as the OMV.
<p>Inclusion of employee cost while the issuance of invoice by the HO to Bos where it is not eligible for the full ITC</p>	<ul style="list-style-type: none"> • In cases where the ITC is not available, the cost of the salary of employees of the HO involved in providing said services to the BOs is not mandatorily required to be included while computing the taxable value of the said supply of services.

- **Clarification on the calculation of interest u/s 50(3) in cases of wrong availment of Integrated Goods and Services Tax (IGST) credit and reversal thereof²:**
 - Since the ITC available under any of the heads, i.e., IGST, Central GST, State GST in electronic credit ledger (ECrL), can be utilised to pay IGST liability, such total ITC has to be considered to calculate interest.
 - The total ITC available in all heads must be considered to determine if and to what extent the balance in ECrL has fallen below the amount of wrongly availed IGST credit.
 - If the total balance of ITC under all the heads taken together is less than the wrongly availed amount of IGST credit, it amounts to the utilisation of such wrongly availed IGST credit; and the extent of utilisation will be the extent to which the total balance falls below such amount of wrongly availed IGST credit and will attract interest.
 - The credit of compensation cess can only be used to pay the compensation cess leviable on the supply of goods and services; therefore, it cannot be considered while determining the ECrL balance to calculate interest.
- **Clarification on refund-related issues³:**
 - **Clarification on the restriction on refund of accumulated ITC based on availability in Form GSTR-2B:**

² Circular No. 192/04/2023-GST dated 17 July 2023

³ Circular No. 197/09/2023- GST dated 17 July 2023

- Since the availment of the ITC has been linked with Form GSTR-2B w.e.f. 1 January 2022, the availability of refund of the accumulated ITC under Section 54(3) of CGST Act, 2017 (CGST Act), for a tax period shall be restricted to ITC as per those invoices which are reflected in Form GSTR-2B for the said tax period or for any of the previous tax periods and on which the ITC is available to the applicant.
- The said restriction shall be applicable for the refund claims for the tax period of January 2022 onwards.
- This restriction shall not impact the refund claims filed for a tax period from January 2022 onwards, which have already been disposed of by the proper officer before the issuance of this circular, in accordance with the extant guidelines in force.

○ **Clarification w.r.t. undertaking required in Form RFD-01:**

- Earlier, the applicant was required to file an undertaking electronically along with a refund claim that it will pay back the refund amount in case of non-compliance with the requirements of Section 16(c)(2) read with Section 42(2) of the CGST Act.
- Due to the omission of Section 42 w.e.f. 1 October 2022, Section 41, along with Form GSTR-2 and GSTR-3, have also been omitted. Hence, the reference to such provisions and forms is being deleted from the undertaking as well as the relevant circular.

○ **Clarification on the manner of calculation of adjusted total turnover:**

- Consequent to an amendment in the definition of the 'turnover of zero-rated supply of goods', it had been clarified vide a circular that the same value of zero-rated/ export supply of goods as calculated as per the amended definition should be considered while calculating the 'turnover in a state or a union territory', and in the 'adjusted total turnover' for the purpose of Rule 89(4).
- Similarly, consequent to the explanation inserted in Rule 89(4) of the CGST Rules, 2017 (CGST Rules), the value of goods exported out of India to be included while calculating 'adjusted total turnover' will be the same as the value determined as per the explanation.

○ **Clarification on refund where an exporter applies for a refund after complying with the provisions of Rule 96A(1) of the CGST Rules:**

- The benefit of zero-rated supplies cannot be denied to the concerned exporters as long as the goods are actually exported or the payment is realised in the case of the export of services, even if it is beyond the prescribed time limit. Therefore, exporters would be entitled to the refund of unutilised ITC on the actual export of the goods or on the realisation of payment in case of export of services.
- The said exporters would be eligible to claim a refund of the IGST tax paid earlier on account of goods not being exported, or as the case be, the payment not being realised for the export of services.
- The refund application of the IGST paid may be made under the category 'Excess payment of tax'. However, due to the non-availability of this facility on the portal, the applicant may file the refund application under the category 'Any Other.'
- No refund of the interest paid shall be admissible.

● **Clarification on the taxability of share capital held by the parent company in the**

subsidiary company⁴: The activity of holding shares of a subsidiary company by the holding company does not qualify as the supply of services and, therefore, cannot be taxed under GST due to the following reasons:

- Securities include shares, which do not qualify as goods or services;
- The purchase or sale of shares or securities in itself is neither a supply of goods nor a supply of services;
- Solely because there is a SAC entry 997171 in the scheme of classification of services wherein it is provided that the 'services provided by holding companies, i.e., holding securities of (or other equity interest in) companies to own a controlling interest', cannot mean that there is a supply of services under Section 7 of the CGST Act.

• **Clarification on availability of ITC in respect of warranty replacement of parts and repair services during the warranty period**⁵:

Issue	Clarification
GST on free replacement and/or repair service during warranty by the manufacturer to the customer.	<ul style="list-style-type: none"> • GST is not chargeable on replacing parts and/ or the repair service during the warranty period without consideration. • If additional consideration is charged for the replacement or service, then GST will be payable on such additional consideration.
Reversal of ITC on free replacement and/or repair service during warranty.	<ul style="list-style-type: none"> • Reversal of ITC is not required in respect of the replacement of parts or the repair services provided during the warranty period, as these are not exempt supplies.
GST on free replacement and/or repair service during the warranty by the distributor to the customer.	<ul style="list-style-type: none"> • No GST will be payable in case of free replacement or repair service provided to the customer without consideration by the distributor on behalf of the manufacturer. However, GST will be payable if additional consideration is charged. • GST would be payable if distributors use parts in their stock or purchase from a third party for providing replacement under warranty and charge consideration for this to the manufacturer by issuing a tax invoice. • No GST is payable on such replacement of parts by the manufacturer where the manufacturer provides such parts to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement. Further, no reversal of ITC is required to be made by the manufacturer in such a case. • If the manufacturer issues a credit note to the distributor for using parts already provided by the manufacturer for

⁴ Circular No. 196/08/2023-GST dated 17 July 2023

⁵ Circular No. 195/07/2023-GST dated 17 July 2023

	replacement, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.
GST on additional repair service provided by the distributor without consideration to the customer but charged for the same to the manufacturer.	GST would be payable on such provision of service by the distributor to the manufacturer, and the manufacturer would be entitled to avail the ITC of the same, subject to other conditions.
GST on extended warranty.	<ul style="list-style-type: none"> • If an extended warranty is taken at the time of the original supply, then the price is included in the original supply, which is a composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. • If an extended warranty is taken after the original supply, then the same is a separate contract, and GST would be payable by the service provider (i.e., either manufacturer or distributor or any third party).

• **Clarification on the manner of dealing with difference in ITC availed in Form GSTR-3B in comparison to Form GSTR-2A for the period 1 April 2019 to 31 December 2021⁶:**

Rule 36(4) regarding the restriction of ITC availability came into effect from 9 October 2019, and Circular No. 183/15/2022-GST dated 27 December 2022 was issued for dealing with the difference in ITC availed in Form GSTR-3B as compared to that detailed in Form GSTR-2A for FY 2017-18 and 2018-19. The benefit of Circular No. 183/15/2022-GST has been extended from 1 April 2019 to 31 December 2021 in the following manner:

Period	Applicability of Rule 36(4) and Circular No. 183/15/2022-GST
1 April 2019 to 8 October 2019	The rule is not applicable to this period; the circular is to be applied for additional credit availability, i.e., not reflected in GSTR-1.
9 October 2019 to 31 December 2019	The ITC in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under Form GSTR-1, shall not exceed 20% of the eligible credit available in respect of invoices or debit notes, the details of which have been furnished by the suppliers, and to this extent, the circular is to be applied.
1 January 2020 to 31 December 2020	Allowed additional credit to the tune of 10% in excess of that reported by the suppliers in their Form GSTR-1 or IFF and to the extent of additional credit circular to be applied.
1 January 2021 to 31	Allowed additional credit to the tune of 5% in excess of that

⁶ Circular No. 193/05/2023-GST dated 17 July 2023

December 2021	reported by the suppliers in their Form GSTR-1 or IFF and to the extent of additional credit circular to be applied.
From 1 January 2022 onwards	No ITC shall be allowed for the period 1 January 2022 onwards in respect of a supply unless the same is reported by suppliers in their Form GSTR-1 or using IFF and is communicated to the said registered person in Form GSTR-2B.

The above instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc., for the period 1 April 2019 to 31 December 2021 and in those cases where any adjudication or appeal proceedings are still pending.

- **Clarification on the applicability of e-invoice w.r.t. supplies made to registered government undertakings⁷:**
 - Government departments or establishments/ government agencies/ local authorities/ PSUs, which are required to deduct tax at source as per the provisions of Section 51 of the CGST, are liable for compulsory registration under GST and treated as registered persons as per Section 2(94) of the CGST Act.
 - An e-invoice is applicable to the supplies made by the registered persons whose turnover exceeds the prescribed threshold for e-invoicing generation to such government undertakings in terms of Rule 48(4) of the CGST Rules.
- **Clarification on tax collected at source (TCS) liability of TCS and compliance obligations in the Open Network for Digital Commerce (ONDC) and similar arrangements under Section 52 of the CGST Act⁸:**

Scenario	Clarification
Where multiple e-commerce operators (ECOs) are involved in a single transaction of supply of goods or services or both through the ECO platform and where the supplier-side ECO itself is not the supplier in the said supply.	The supplier-side ECO finally releases the payment to the supplier for a particular supply made by the said supplier through it. Therefore, the compliances and collection of the TCS is to be done by the supplier-side ECO that finally releases the payment to the supplier for a particular supply made by the said supplier through it.
Where multiple ECOs are involved in a single	The buyer-side ECO collects payment from the buyer, deducts its fees, and remits the balance to the supplier (which is itself an ECO). Therefore, the compliances and collection of the TCS are to be done by the buyer-side ECO.

⁷ Circular No. 198/10/2023-GST dated 17 July 2023

⁸ Circular No. 194/06/2023-GST dated 17 July 2023

transaction of the supply of goods or services or both through the ECO platform and the supplier-side ECO is itself the supplier of the said supply.

Our comments

The circulars offer much-needed relief to the taxpayers by addressing various important issues, including one of the most contentious topics related to the ISD mandate and cross-charge valuation. The circulars provide taxpayers with the flexibility to opt any suitable method for distributing the common services. In addition, the clarification that even nil value will be considered as the value of service for internally generated costs, and the exclusion of employee costs when the recipient is ineligible for ITC, represent taxpayer-friendly measures.

Further, to keep the refund provisions in accordance with the ITC provisions, it has been made clear that the refund of the accumulated ITC will be limited to the ITC to the extent available in Form GSTR-2B. However, it shall not affect the refund claims filed for a tax period from January 2022 onwards, which have already been disposed of by the proper officer.

Taxpayers will benefit from the clarification that they are not required to pay interest on the wrongly availed IGST in case enough balance is available under all the ITC heads, i.e., cumulative balance under the CGST, SGST, and IGST.

These clarifications aim to reduce litigation and create a more transparent and tax-efficient environment.

Contact us



Scan QR code for our offices

www.grantthornton.in

For more information or for any queries, write to us at GTBharat@in.gt.com

© 2023 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.