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**Amendments**

Applicable For  
**MAY / NOV 2025 EXAMS**

**Part 1**

**By CA Vishal Bhattad**

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# == Index ==

Sr. No.	Chapter Name	Pg. no.
1.	<b>Concept of Supply</b>	<b>1</b>
	<b>Amendment in Clarification</b>	
	i) Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company [Cir. No.213/07/2024 ]	1
	ii) Clarification on whether GST is payable by insurance company on salvage/wreck value earmarked in the claim assessment of the damage caused to the motor vehicle [Cir. No.215/09/2024 ]	1
	iii) Applicability of GST on Preferential Location Charges (PLC) collected along with consideration for sale/ transfer of residential / commercial properties (Cir. No. 234/28/2024)	2
2.	<b>Reverse Charge Mechanism</b>	<b>3</b>
	<b>Amendment in Notification</b>	
	i) RCM In case of Supply of Goods	3
	ii) RCM in Case of supply of services - Entry 5AB :- Renting of any immovable property other than residential dwelling	3
3.	<b>Exemption From GST</b>	<b>4</b>
	<b>Amendment in Notification</b>	
	<b>Existing Exemption Amended</b>	
	i) Si.No. 12 :- Renting of Residential Dwelling	4
	iii) Si.No. 66 [Cir No. 234/28/2024] :- Education & Training	8
	iii) Sr. No.71: Training Service under Deen Dayal Upadhyaya Grameen Kaushalya Yojana	10
	iv) Sr. No. 69 :- Service by NSDC etc.	11
	<b>Exemption Newly Added</b>	
	i) Si.No. 12A with Cir No. 228/ 22/2024 :- Accommodation services	4
	ii) Si.No. 66A [Cir No. 234/28/2024] :- Affiliation Services by Educational Boards or Councils to Government-Controlled Schools	8
	iii) Si.No. 9E : Certain services provided by Indian Railways	9
	iv) Si.No. 9F : Services provided by one zone/division under Ministry of Railways	9
	v) Si.No. 9G : Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways	9
	vi) Si.No. 25A : Ancillary Services in Electricity Transmission & Distribution	9
	vii) Si.No. 44A : Research & Development Services Funded by Govt Entities & Notified Institutions	9
viii) Si.No.36A: Re-Insurance Services	10	
ix) Si.No.10L: Import of services by Foreign Airline Establishment	10	

	<b>Amendment in Clarification</b>	
	i) GTA with cargo handline services eg. packing charges, loading, unloading charges etc. (Cir. No. 234/28/2024)	11
	ii) Clarification on taxability of transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person (Cir. No. 218/12/2024 dt 26.06.24):-	11
	iii) GST on statutory collections made by Real Estate Regulatory Authority (RERA) [Cir. No. 228/22/2024]	12
4.	<b>Time of Supply</b>	<b>13</b>
	<b>Amendment in Clarification</b>	
	i) Clarification on TOS for payment of GST on spectrum usage services when payments are made in instalments by telecom operators (Cir. No. 222/16/2024)	13
	ii) Clarification on TOS of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model i.e. (Circular No. 221/15/2024):-	13
5.	<b>Value of Supply</b>	<b>14</b>
	<b>Amendment In Rule</b>	
	i) Rule 28(2) : Value of supply of goods or services or both between distinct or related persons, other than through an agent	14
	<b>Amendment in Clarification</b>	
	iii) Clarification on taxability & valuation of supply of services of providing corporate guarantee between related persons based on amended provisions (Cir. No. 225/19/2024 )	14
	iv) Clarification on valuation of supply of import of services by a related person where recipient is eligible to full ITC (Cir.No. 210/4/2024)	16
	vi) - Clarification on availability of ITC for warranty replacement of parts and repair services during warranty period [Cir. No. 195/07/2023 ][Cir. No. 216/10/2024]	17
	v) Clarification on the requirement of reversal of ITC for the portion of premium for life insurance policies which is not included in taxable value (Cir. No. 214/8/2024 )	18
	l) Mechanism for providing evidence of compliance of conditions of Sec 15(3)(b)(ii) by suppliers (Cir. No.-212/6/2024 dt. 26/06/24)	18
	ii) Whether GST is applicable on incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards & low value BHIM-UPI transactions (Cir. No. 228/22/2024)	18
6.	<b>Input Tax Credit</b>	<b>19</b>
	<b>Amendment in Section</b>	
	i) Newly added Subsec - Sec 16(5) & 16(6) :- Eligibility & Conditions of ITC	19
	<b>Amendment in Rule</b>	
	ii) Rule 36(3) & (4) : Documentary requirements and conditions for claiming ITC	21

<b>Amendment in Clarification</b>		
i)	Clarification on time limit for availing ITC u/s 16(4) for RCM supplies received from URPs & tax paid under RCM (Cir.No. 211/5/2024 )	21
ii)	Availability of ITC in respect of Demo Vehicles purchase by dealer from manufacturer (Circular no. 231/25/2024):-	22
iii)	Clarification on entitlement of ITC by insurance co. on expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement (Cir. No. 217/11/2024):-	23
iv)	Clarification on availability of ITC on ducts & manholes used in the network of optical fiber cables (OFCs) u/s 17(5) (Cir. No. 219/13/2024)	24
7.	<b>Place of Supply</b>	<b>25</b>
<b>Amendment in Clarification</b>		
i)	Clarification on sec 10(1)(ca) of IGST Act on POS of goods to URPs (Cir.No. 209/3/2024 )	25
ii)	Clarification on POS applicable for custodial services provided by banks to Foreign Portfolio Investors (FPIs) (Circular No.220/14/2024)	26
iii)	Clarification for advertising services provided by Indian advertising companies/agencies to foreign clients (Circular No. 230/24/2024)	26
iv)	Clarification on POS of data hosting services provided by service providers located in India to cloud computing service providers located outside India (Cir.No. 232/26/2024)	27





# CONCEPT OF SUPPLY

## Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company [Cir. No.213/07/2024 ]

### Facts:-

- 1) Indian companies offer Employee Stock Option Plan (ESOP)/Employee Stock Purchase Plan (ESPP) /Restricted Stock Unit (RSU) options of their foreign holding company to its employees as per the employment contract.
- 2) Upon employees exercising these options, the foreign holding company directly allots shares to the employees, and the cost is reimbursed by the Indian subsidiary to the foreign holding company.

**Issue:-** Whether these transactions should be considered as import of financial services and thus be liable for GST under RCM?

### Clarification:-

- ⇒ ESOP/ESPP/RSU is a part of employees remuneration as per their contract & thus, it is not a supply as per para 1 of Schedule III
- ⇒ Securities/shares are neither goods nor services under the GST law & thus, its sale or purchase is not a supply.
- ⇒ Thus, the reimbursement from the Indian subsidiary to the foreign holding company, when done on a cost-to-cost basis, is not subject to GST.
- ⇒ However, if any additional fee, markup, commission, etc is charged by the foreign holding company from the domestic subsidiary for such issuance, it will be considered as a supply of services of facilitating the transaction in securities and GST will be levied on the additional amount (being import of services) under reverse charge.

**Case Study:-** ABC Tech Pvt. Ltd., an Indian subsidiary of Global Tech Inc., a US-based company, offers its employees ESOPs as part of their compensation package. When an employee decides to exercise their stock options, Global Tech Inc. directly transfers the shares to the employee. ABC Tech Pvt. Ltd. reimburses Global Tech Inc. for the cost of these shares on a cost-to-cost basis.

**Are ESOP/ESPP/RSU transactions considered as supply of goods or services under GST?**

**Hint:-** No, ESOP/ESPP/RSU transactions are not considered as supply of goods or services under GST. Securities/shares are neither goods nor services as per the definitions in the GST Act.

## Clarification on whether GST is payable by insurance company on salvage/wreck value earmarked in the claim assessment of the damage caused to the motor vehicle [Cir. No.215/09/2024 ]

### Facts:-

- ⇒ Insurance company insures the vehicles for any damages & in return, charges premium from the owner of the vehicle.
- ⇒ The responsibility of the insurance company is to either repair the damaged vehicle or compensate the insured as per the terms of the insurance policy. What is the GST impact if,
  - a) Deduction of Salvage Value

b) Full Insured Declared Value (IDV) Settlement without deducting Salvage Value

**Clarification:-**

a) **Deduction of Salvage Value:** When the claim is settled after deducting the salvage value, the ownership of the salvage remains with the insured. The salvage does not become the property of the insurance Co., and the deduction of salvage value from the claim amount is not considered a supply, hence insurance company is not liable to pay GST on the same.

b) **Full Insured Declared Value (IDV) Settlement:**

- If the insurance contract stipulates settlement on full IDV without deducting salvage value/wreckage (as per the contract), the salvage becomes the property of the insurance Co. after settling the full claim amount.
- Thus, insurance company is liable to discharge GST on supply of the salvage to the salvage buyer.

**Applicability of GST on Preferential Location Charges (PLC) collected along with consideration for sale/ transfer of residential / commercial properties (Cir. No. 234/28/2024)**

- Allowing choice of location of apartment is **integral part** of supply of construction services.
- It is clarified that location charges or PLC paid along with consideration for the construction services of residential / commercial/ industrial complex **forms part of composite supply.**
- The supply of construction services is main service & **PLC is naturally bundled** with it.
- It is eligible for **same tax** treatment as the main supply of construction service before issuance of completion certificate.



# REVERSE CHARGE & ECO

Goods and services notified under reverse charge mechanism under section 9(3) of the CGST Act/ section 5(3) of the IGST Act are as follows:

## Liability under RCM for Supply of Goods (N/N 4/2017 Central Tax(Rate))

S. No.	Description of supply of Goods	Supplier of goods	Recipient of supply (Liable to Pay Tax)
8.	<b>Metal Scrap</b> <span style="background-color: red; color: white; padding: 2px;">Newly Inserted by N/No. 06/2024</span>	Any unregistered person	Any registered person

## 5AB Renting of any immovable property other than residential dwelling

Reverse Charge	Services	100 % Liability
<span style="background-color: red; color: white; padding: 2px;">Newly Inserted by N/N 09.2024</span>	Service by way of Renting of any immovable property other than residential dwelling <div style="display: flex; justify-content: center; align-items: center; gap: 20px;"> <div style="border: 1px solid black; padding: 5px; background-color: #f0f0f0;">By Any unregistered person</div> <div style="border: 1px solid black; padding: 5px; background-color: #e0e0e0;">To Any registered person</div> </div>	Any registered person

## Newly added or updated questions from questionnaire

### CCP 03.03.13.00

State, with reason, the person liable to pay GST in each of following independent cases:-

Assume recipient is located in taxable territory.

(vi) Mr. Chirag who is not registered under GST rents out its commercial property (non-residential) to ABC Pvt. Ltd. (R.P.) for the purpose of setting up their office.

Answer:-

(vi)	<p><b>Legal provision:</b> As per section 9(3) of CGST Act, if service of renting of immovable property other than residential dwelling is provided by the <b>any unregistered person to any registered person</b> located in the taxable territory, then GST is payable by <b>recipient</b> under reverse charge.</p> <p><b>Discussion &amp; Conclusion:</b></p> <ul style="list-style-type: none"> <li>➔ In the given case, Mr. Chirag who is unregistered person and provides services of <b>renting of immovable property for commercial purposes</b> to ABC Pvt. Ltd. (R.P.)</li> <li>➔ Thus ABC Pvt. Ltd. is liable to pay GST under Reverse charge mechanism.</li> </ul>
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# EXEMPTIONS FROM GST

Entry No.	Renting of Immovable Property Sector	
12	<b>Renting of Residential Dwelling</b>	
	<b>Exemption</b>	Services by way of <b>renting</b> of <b>residential dwelling</b> for use as residence <b>except where the residential dwelling is rented to a registered person</b> <b>Comment:-</b> This service is exempt when recipient is unregistered person.
	<b>Explanation 1</b>	For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, – ➤ the registered person is <b>proprietor of a proprietorship concern</b> & rents the residential dwelling in his personal capacity for use as his own residence and ➤ such renting is on his <b>own account</b> and not for the proprietorship concern
	<b>Explanation 2 (inserted) i.e. Non-applicability</b> <b>newly inserted by N/No. 04/2024 w.e.f. 15/07/24</b>	<b>Nothing contained in this entry shall apply to-</b> a) <b>accommodation services for students in student residences;</b> b) <b>accommodation services provided by Hostels, Camps, Paying Guest accommodations &amp; the like.</b> <b>Comment:-</b> ➤ Student residences refer to accommodations provided to students specifically. It includes student hostels/apartments, university/college dormitories, off-campus student housing & similar living quarters. ➤ Services provided by educational institutions, including housing as composite supply, is exempt from GST, but taxability of such individual service supplied depends on its nature & type of institution providing it.
12A	<b>Accommodation services</b> <b>newly inserted by N/No. 04/2024 w.e.f. 15/07/24</b>	
	<b>Supply of accommodation services having value of supply less than or equal to ₹20,000 per person per month provided that the accommodation service is supplied for a minimum continuous period of 90 days</b>	
	<b>Non-applicability:-</b>	➤ VOS exceeds ₹ 20,000 per person per month or ➤ Accommodation services supplied for less than 90 days or ➤ Accommodation services supplied for minimum non-continuous 90 days.
	<b>GST liability on certain accommodation services [Cir. No. 228/22/2024]</b>	
<b>Issue:-</b>	<b>1. Whether service of hostel accommodation, service apartments/hotels booked for longer period is a service of renting of residential dwelling for use as residence &amp; exempted under Sl. No. 12?</b> <b>2. Whether service of hostels for poor &amp; middle-class students run by charitable trusts is exempt?</b>	



**Clarification:-**

- ⇒ It is not exempt under entry 12 but it will be exempt under entry 12A, if it satisfies the conditions given thereunder.
- ⇒ Also, If VOS of accommodation services supplied between **01.07.2017 to 14.07.2024 was ≤ ₹20,000** per person per month & was supplied for a minimum continuous period of 90 days, then GST liability on the same is regularized on 'as is where is' basis for such period.

**Meaning of As is Where is (Cir No. 236/30/2024)**

- ⇒ If matters are regularized on 'as is' or 'as is, where is basis', for 2 competing rates & GST is paid at lower of them, or at nil rate by some suppliers while other suppliers have paid at higher rate,
- ⇒ payment at lower rate shall be treated as tax fully paid for regularized period. If taxpayers had paid at higher GST rate, they shall not be entitled to any refund.

Sl.No.12	Renting of Residential Dwelling (RD) - for use as residence		
Supplier	Recipient	Taxability	Who will pay tax
⇒ Any Person [RP + URP]	URP (if use for residence)	Exempt	—
⇒ Any Person [RP + URP]	RP But if RP is - Proprietor - using RD in Personal capacity for own residence - Renting on own account	Taxable Exempt	Under RCM recipient (RP) is liable to pay tax —
Sl.No.12A	Accommodation Services ( Hostels, residence for student, Camps, Paying Guest accommodations & the like. ) - Value 20,000 PP/PM for Continuous period of 90 days		
⇒ Any Person [RP + URP]	Any Person [RP + URP]	Exempt	—

**When tax payable on accommodation services:-**

- Value > 20,000 PP/PM or
- Supplied for non-continuous period of 90 days
- If charges on daily basis & not on monthly basis

Renting of Immovable property other than Residential Dwelling (Fully taxable)			
⇒ RP	Any Person [RP + URP]	Taxable	Supplier (FCM)
⇒ URP	RP	Taxable	Under RCM recipient (RP) is liable to pay tax

## Newly added or updated questions from questionnaire

### CCP.04.08.14.00

A hotel offers accommodation services with a value of supply at ₹18,000 per person per month. A customer books a room for 95 continuous days. Under the GST law, is this accommodation service subject to GST?

**Answer:-**

#### Legal Provision:

⇒ Accommodation services with a value of supply **less than or equal to ₹20,000** per person per month, provided for a minimum continuous period of 90 days, are **exempt** from GST.

#### Discussion & Conclusion:

- ⇒ In this case, the hotel offers accommodation at ₹18,000 per person per month, and the customer books the room for 95 continuous days.
- ⇒ Since both conditions are met (value of supply is less than ₹20,000 per person per month and the accommodation is for more than 90 days). **Therefore**, this service is **exempt** from GST.

### CCP.04.08.14.01

Roshan(RP) of Bengaluru owns 9 properties in different parts of Karnataka. From the information given below, find out GST payable by him for the quarter ending on 31st March, 20XX. GST rate is 18 per cent (i.e., CGST 9 % + SGST 9 %) Municipal tax pertaining to these properties is ₹ 44,000. Expenditure on repair is ₹ 1,32,000. Fire insurance premium paid by Roshan is ₹ 48,000. [CMA Final RTP Dec 18] [CA Final RTP Dec 2018-Similar]

Particulars	Amount
Rent of residential Building I (given on rent to A, a salaried employee & unregistered under GST, for his residence)	10,00,000
Rent of residential Building II [given on rent to a bank, registered under GST, for residence of a branch manager)	15,00,000
Rent of vacant plot of Land III (given on rent to a manufacturing company)	8,00,000
Rent of vacant plot of Land IV (given on rent for agriculture purposes)	4,50,000
Rent of residential Building V (given on rent to B Ltd., an unregistered person under GST, for residence of employees)	3,00,000
Rent of commercial Building VI (given on rent to C, who has a sole proprietary business)	1,50,000
Rent of residential building VII (it is situated in residential area but used for commercial purposes and it is given on rent on the understanding that the tenant, who is unregistered under GST, can use it for commercial purposes if there is no objection by the municipal corporation)	6,50,000
Accommodation of residential building VIII (i.e Greenwood Hostel, given on rent to college student for 3 months whose rent is ₹ 25,000 per person per month)	75,000
Accommodation of Students Residence building IX for 60 days, rent is ₹ 18,000 per person per month	36,000

**Answer:- Computation of GST of Roshan for the quarter ending on 31st March, 20XX:-**

Particulars	Amount (₹)	Explanation
Rent of residential Building I	-	Renting of residential dwelling for use as residence to an unregistered person is <b>exempt</b> .
Rent of residential Building II	-	Letting out of residential building for residential purposes to a registered person is <b>liable to GST</b> , but the tax thereon is to be paid by recipient (i.e. bank) under reverse charge.
Rent of vacant plot of Land III	8,00,000	It is not covered under any exemption & hence, <b>taxable</b> . (Roshan is RP, hence RCM is not applicable)
Rent of vacant plot of Land IV	-	Letting out of vacant plot for agricultural purposes is <b>exempt</b> .
Rent of residential Building V	-	Letting out of residential building for residential purposes to an unregistered person is <b>exempt</b> .
Rent of commercial Building VI	1,50,000	Letting out of commercial property is <b>liable to GST</b> .
Rent of residential building VII	6,50,000	Letting out of residential property to unregistered person for commercial purposes is <b>chargeable to tax under forward charge</b> .
Rent of residential building VIII	75,000	Renting of residential dwelling to student is <b>taxable</b> under GST under Entry no 12 & also under Entry no. 12A as value <b>exceeds ₹20,000 per person per month</b> .
Rent of Students Residence Building IX	36,000	Renting of residential dwelling to student is <b>taxable</b> under GST under Entry no 12 & also under Entry no. 12A as value <b>not exceeding ₹20,000 per person per month but it is for a period of 60 days</b> .
<b>Taxable value of supply</b>	<b>17,11,000</b>	
CGST @ 9%	1,53,000	
SGST @ 9%	1,53,000	
<b>Total GST charged by Roshan</b>	<b>3,06,000</b>	

Roshan has paid fire insurance premium and expenditure on repair of buildings. These expenses are not deductible while calculating taxable value of supply. However, input tax credit pertaining to these expenses can be claimed, subject to provision of section 17 of CGST Act read with Rule 42 of CGST Rules.

# Education Sector

<b>66</b>	<b>Education &amp; Training</b>	<p>Education as a part of an <b>approved vocational education course</b>.</p> <div style="border: 1px solid #FF0000; padding: 5px; margin-top: 5px;"> <p><b>Notes:-</b> Approved vocational education course includes</p> <p>➤ <b>Approved Vocational Course:</b> A course by ITI/ ITC affiliated to <b>NCVET</b> or SCVT offering courses in trades notified under the Apprentices Act, 1961.</p> <div style="border: 1px solid #FF0000; padding: 2px; margin: 2px 0;"> <p><b>Private ITI :-</b> Services given by private ITIs exclusively for trades designated under the Apprentices Act, 1961 are exempt from GST. However, services relating non-designated trades are subject to GST.</p> </div> <p>➤ <b>Modular Employable Skill Course (Skills for gainful employment to school drop-outs, workers etc.):</b> A course approved by NCVET, run by Directorate General of Training, Ministry of Skill Development and Entrepreneurship.</p> <p><b>NCVET = National Council for Vocational &amp; Educational Training, SCVT = State Council for Vocational Training</b></p> </div>
	<b>Substituted by N/No. 08/2024</b>	
	<b>Clarification</b>	<p><b>GST on flying training courses conducted by FTO (Flying training Organizations) approved by the DGCA [Cir.No. 234/28/2024]</b></p> <p><b>Education as a part of an approved vocational education course :-</b> It is <b>clarified</b> that approved flying training courses conducted by Flying training Organizations (FTOs) approved by Directorate General of Civil Aviation (DGCA), wherein the DGCA mandates the requirement of a completion certificate, <b>are exempt</b>.</p>
<b>66A</b>	<b>Affiliation Services by Educational Boards or Councils to Government-Controlled Schools</b>	<b>newly inserted by N/No. 08/2024</b>
	<b>Exemption</b>	<p>Services of affiliation provided</p> <p>➤ <b>by</b> a Central or State Educational Board or Council or any other similar body,</p> <p>➤ <b>To</b> a school established, owned or controlled by the CG, SG, UT, LA, Govt. authority or Govt. entity.</p>
	<b>CBIC Clarification:- GST on Affiliation services provided by Universities to Colleges &amp; Education Board to Schools [Cir. No. 234/28/2024 ]</b>	
	<b>1.</b>	<p>➤ Universities' affiliation services to colleges does not involve student admissions or exams.</p> <p>➤ These services are <b>not exempt</b> from taxes, so an 18% GST applies.</p>
	<b>2.</b>	<p>➤ Affiliation services provided to schools by Education board or Councils does not include student admissions or exams</p> <p>➤ These services are <b>taxable</b>.</p>



## Government Sector

<b>9E</b>	<b>Certain services provided by Indian Railways:-</b>	<div style="background-color: #D9534F; color: white; padding: 2px; text-align: center;">                     newly inserted by N/No. 04/2024 w.e.f. 15/07/24                 </div>				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;"><b>Exemption</b></td> <td>                     Services provided by Ministry of Railways (Indian Railways) to <b>individuals</b> by way of-                      a) Sale of platform tickets;                      b) Facility of retiring rooms/waiting rooms;                      c) Cloak room services;                      d) Battery operated car services.                 </td> </tr> </table>	<b>Exemption</b>	Services provided by Ministry of Railways (Indian Railways) to <b>individuals</b> by way of- a) Sale of platform tickets; b) Facility of retiring rooms/waiting rooms; c) Cloak room services; d) Battery operated car services.			
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<b>9F</b>	<b>Services provided by one zone/division under Ministry of Railways</b>					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;"><b>Exemption</b></td> <td>                     Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways).   <div style="border: 1px solid red; padding: 2px;"> <b>Analysis:</b> Intra railway transactions between different zones/divisions are exempt.                     </div> </td> </tr> </table>	<b>Exemption</b>	Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways).  <div style="border: 1px solid red; padding: 2px;"> <b>Analysis:</b> Intra railway transactions between different zones/divisions are exempt.                     </div>	<div style="background-color: #D9534F; color: white; padding: 2px; text-align: center;">                     newly inserted by N/No. 04/2024 w.e.f. 15/07/24                 </div>		
<b>Exemption</b>	Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways).  <div style="border: 1px solid red; padding: 2px;"> <b>Analysis:</b> Intra railway transactions between different zones/divisions are exempt.                     </div>					
<b>9G</b>	<b>Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways</b>					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;"><b>Exemption</b></td> <td>                     Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways (Indian Railways) by way of allowing Ministry of Railways (Indian Railways)                      ➔ <b>to use the infrastructure</b> built &amp; owned by them during the concession period against consideration &amp;                      ➔ <b>services of maintenance</b> supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built &amp; owned by the SPVs during the concession period against consideration                 </td> </tr> <tr> <td><b>Definition of Special Purpose vehicles (SPVs)</b></td> <td>                     A <b>special-purpose vehicle (SPV)</b> is a legal entity that allows multiple investors to pool their capital and make an investment in a single company. SPVs have multiple use-cases in the business world.                 </td> </tr> </table>	<b>Exemption</b>	Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways (Indian Railways) by way of allowing Ministry of Railways (Indian Railways) ➔ <b>to use the infrastructure</b> built & owned by them during the concession period against consideration & ➔ <b>services of maintenance</b> supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built & owned by the SPVs during the concession period against consideration	<b>Definition of Special Purpose vehicles (SPVs)</b>	A <b>special-purpose vehicle (SPV)</b> is a legal entity that allows multiple investors to pool their capital and make an investment in a single company. SPVs have multiple use-cases in the business world.	<div style="background-color: #D9534F; color: white; padding: 2px; text-align: center;">                     newly inserted by N/No. 04/2024 w.e.f. 15/07/24                 </div>
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<b>25A</b>	<b>Ancillary Services in Electricity Transmission &amp; Distribution</b>	<div style="background-color: #D9534F; color: white; padding: 2px; text-align: center;">                     Newly Inserted by N/N 08/2024                 </div>				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;"><b>Exemption</b></td> <td>                     Supply of services by way of                      ➔ providing metering equipment on rent, testing for meters / transformers / capacitor etc., releasing electricity connection,                      ➔ shifting of meters/service lines, issuing duplicate bills etc.,                      which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers.                 </td> </tr> </table>	<b>Exemption</b>	Supply of services by way of ➔ providing metering equipment on rent, testing for meters / transformers / capacitor etc., releasing electricity connection, ➔ shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers.			
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<b>44A</b>	<b>Research &amp; Development Services Funded by Govt Entities &amp; Notified Institutions</b>					
	<p><b>Exemption:-</b> Research and development services against consideration received in the form of grants supplied by –</p> <p>(a) a Government Entity; or</p> <p>(b) a research association, university, college or other institution, notified u/s 35(1)(ii)/(iii) of Income Tax Act, 1961.</p> <p><b>Proviso:-</b> Research association, university, college or other institution, notified u/s 35(1)(ii)/(iii) of Income Tax Act, 1961 is so notified at the time of supply of the research and development service.</p>	<div style="background-color: #D9534F; color: white; padding: 2px; text-align: center;">                     Newly Inserted by N/N 08/2024                 </div>				

**71 Training Service under Deen Dayal Upadhyaya Grameen Kaushalya Yojana**

**Exemption:-** Services provided by training providers (Project implementation agencies) under **Deen Dayal Upadhyaya Grameen Kaushalya Yojana** implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the **National Council for Vocational Education and Training**.

Substituted by N/N 08/2024

**Life/ General Insurance Sector**

**36A Re-Insurance Services**

**Exemption:-** Services by way of reinsurance of the insurance schemes specified in serial number **35 or 36 or 40**

**Note:-** entry no. 36- Life Insurance Services, entry no.40- Insurance Scheme for Government Services, entry no.35 - Specified General Insurance Scheme

**Inclusion of retrocession services in reinsurance. :-**

- As per IRDAI (Re-insurance) Regulations, 2018, 'Retrocession' means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another Indian Insurer or a CBR (Cross Border Re-insurer).
- Thus, 'reinsurance' under Sl.No. 36A of exemption notification **includes 'retrocession' services.**

**List of Services exempt under IGST**

**10L Import of services by Foreign Airline Establishment**

**Exemption** Import of services by an establishment of a foreign company in India, which is an airline company, from a related person or from any of its other establishments outside India, when made without consideration.

Newly Inserted by N/no. 08/24

**Explanation** Foreign co. shall have meaning as assigned u/s 2(42) of Companies Act, 2013.

**Proviso** GST at applicable rates is paid by the establishment of foreign airline co. in India on transport of goods & passengers as may be applicable.

**Proviso** Ministry of Civil Aviation certifies that the establishment of foreign co. in India is that of an airline co. which has been designated by foreign govt. under the applicable bilateral air services agreement with India.

**Proviso** Ministry of Civil Aviation certifies that on a reciprocal basis, designated Indian airlines are not subject to levy of similar taxes by whatever name called for the same services appearing under the entry, by Govt. of the country designating the foreign airline co.

## Training Sector

### 69 Service by NSDC etc.

Substituted by N/N 08/2024

**Exemption:-** Any services provided by –

- a. the National Skill Development Corporation set up by the Government of India;
  - b. the National Council for Vocational Education and Training;
  - c. an Awarding Body recognized by the National Council for Vocational Education & Training;
  - d. an Assessment Agency recognized by the National Council for Vocational Education and Training;
  - e. a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training,
- in relation to-
- i) the National Skill Development Programme or any other scheme implemented by the National Skill Development Corporation; or
  - ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
  - iii) any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package.

## CBIC Clarifications

**GTA with cargo handline services eg. packing charges, loading, unloading charges etc. (Cir. No. 234/28/2024)**

- ➔ **Bundle Invoice:-** Ancillary/incidental services provided by GTA in the course of transportation of goods by road is a composite supply of transport of goods, irrespective of invoicing method used by it.
- ➔ **Separate Invoice:-** If such services are not provided in the course of transportation of goods and are invoiced separately, then these services will not be treated as composite supply of transport of goods & taxable individually as cargo handling service

**Clarification on taxability of transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person (Cir. No. 218/12/2024 dt 26.06.24):-**

**Issue:-** Whether processing fee/ administrative charges/ loan granting charges etc. or interest/discount charged for granting of loan by a person to a related person or by an overseas affiliate to its Indian affiliate is a deemed taxable supply or not u/s 7(1)(c) read with para 2 & 4 of Sch I?

**Clarification:-**

<b>Supply of services</b>	As per <b>sec 7(1)(c) &amp; Para 2 &amp; 4 Sch I</b> , supply of goods &/or services or import of service between/from related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration.
<b>Exemption</b>	Granting loans/ credit/ advances, for consideration being interest or discount, is exempt.

<p><b>Charges other than interest/discount</b></p>	<ul style="list-style-type: none"> <li>➤ Processing fee/service fee/facilitation fee/ loan granting charges/ administrative charges is one-time charge to apply for loan to cover administrative cost to process loan &amp; is non-refundable.</li> <li>➤ These are generally charged by bank/FI &amp; independent lender for checking financial standing, credibility of applicant, etc.</li> <li>➤ Overseas affiliates or domestic related persons generally do not charge processing fee/ service fee, except interest/discount on loan because they may not require to follow such processes.</li> <li>➤ Even between unrelated parties (bank/ independent lender &amp; borrower), processing fee/ administrative charges/ loan granting charges etc., might not be there or might be waived based on their relations.</li> <li>➤ Thus, if amount charged except interest/discount are consideration that are liable to GST.</li> </ul>
<p><b>Conclusion</b></p>	<ol style="list-style-type: none"> <li>1. <u>If consideration (other than interest/discount) is not charged from related person, or by overseas affiliate from Indian party for extending loan/ credit:-</u> <ul style="list-style-type: none"> <li>➤ There is no supply of service between them u/s 7(1)(c) read with para 2 &amp; 4 of Sch I.</li> <li>➤ There is <b>no question of levy of GST</b> on it by resorting to OMV as per rule 28.</li> </ul> </li> <li>2. <u>If consideration (in addition to interest/discount) is charged from related person, or by overseas affiliate from Indian party for extending loan/ credit:-</u> <ul style="list-style-type: none"> <li>➤ It is a <b>supply of services</b> of processing/facilitating/ administering, etc. of loan.</li> <li>➤ Such consideration will be <b>liable</b> to GST.</li> </ul> </li> </ol>

**GST on statutory collections made by Real Estate Regulatory Authority (RERA) [Cir. No. 228/22/2024]**

- RERA is constituted under Real Estate (Regulation & Development) Act, 2016 to regulate real estate development & construction of building entrusted to them under Indian Constitution.
- RERA is a governmental authority as per definition in exemption notification.
- **Thus, statutory collections made by RERA are exempt.**





# TIME OF SUPPLY

## Clarification on TOS for payment of GST on spectrum usage services when payments are made in instalments by telecom operators (Cir. No. 222/16/2024)

**Facts:-** Telecom operators bid for spectrum rights from the govt. Service provider is the Govt. of India, and recipient is the telecom operator. GST is paid by the telecom operator on a reverse charge basis.

**Issue :-** How to determine TOS?

**Clarification:-**

<b>Type of supply:</b>	For spectrum allocation services where telecom operators opt for deferred payments, the supply is treated as a <b>continuous supply of service</b> as it is agreed to be continuously provided for more than 3 months with periodic payment obligations.
<b>Tax invoice:</b>	As per <b>sec 31(5)(a)</b> , invoices must be issued on or before the due date of payment by recipient which is ascertainable from the contract.
<b>TOS u/s 13(3):</b>	<ul style="list-style-type: none"> <li>➤ If <b>full upfront payment</b> is made by telecom operator, GST is payable when the payment is due or made, whichever is earlier.</li> <li>➤ For <b>deferred payments</b>, GST is payable as and when each instalment is due or paid, whichever is earlier.</li> </ul>
<b>Other services:</b>	This principle also applies to other government-allocated natural resources with similar payment options (i.e. upfront or deferred payments).

## Clarification on TOS of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model i.e. (Cir. No. 221/15/2024):-

<b>Nature of HAM Contracts</b>	<ul style="list-style-type: none"> <li>➤ HAM contracts are single agreements covering both construction &amp; O&amp;M of highways along with the required payments for both.</li> <li>➤ Certain portion of Bid Project Cost is received during construction period &amp; remaining payment through deferred payment (annuity) spread over 15-17 years.</li> <li>➤ Payment for each instalment is to be made after specified periods, or on completion of an event, as specified in the contract.</li> </ul>
<b>Type</b>	This model is covered under 'continuous supply of services'
<b>TOS as per sec 13(2) read with sec 31(5)</b>	<ul style="list-style-type: none"> <li>➤ If <b>invoices are issued within time</b>, TOS shall arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before specified date or date of completion of event specified in contract.</li> <li>➤ If <b>invoices are not issued</b> on or before the specified date or completion of event as per contract, TOS shall be earlier of - date of provision of service (i.e. due date of payment) or date of receipt of payment.</li> </ul> <div style="border: 1px solid orange; padding: 5px; margin-top: 10px;"> <p><b>Note:</b> Date of provision of service = due date of payment as per contract, as invoice is required to be issued on or before the due date of payment u/s 31(5).</p> </div>
<b>Interest from NHAI</b>	The annuity/instalment payable from NHAI to concessionaire, which may include an <b>interest component</b> , are included in value & taxable <b>u/s 15(2)(d)</b> .



# VALUE OF SUPPLY

## Rule 28 :- Value of supply of goods or services or both between distinct or related persons, other than through an agent

### VOS for corporate guarantee (Rule 28(2))

Notwithstanding anything contained in sub-rule (1), the **value of supply** of services by a supplier to a recipient who is a related person **located in India**, by way of providing **corporate guarantee** to any banking company or FI on behalf of the said recipient, shall be deemed to be

- ⇒ 1% of the amount of such guarantee offered **per annum**, or
- ⇒ the actual consideration, **whichever is higher.**”

Newly inserted by N/No. 12/2024 Dt. 10/07/24 w.e.f. 26/10/23

Newly inserted by N/No. 12/2024 Dt. 10/07/24 w.e.f. 26/10/23

**Provido** **Provided that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the value of said supply of services.**

## CBIC Clarifications

### Clarification on taxability & valuation of supply of services of providing corporate guarantee between related persons based on amended provisions (Cir. No. 225/19/2024)

1	<b>Whether rule 28(2) apply to corporate guarantees issued prior to 26/10/23 or issued prior but still in force?</b>	<ul style="list-style-type: none"> <li>⇒ The supply of corporate guarantees to banks by a supplier for a related recipient was always taxable.</li> <li>⇒ Rule 28(2) (w.e.f. 26/10/23) is just for valuing these taxable supplies.</li> <li>⇒ Guarantees issued or renewed before this date follow the old Rule 28 for valuation, <b>while those issued or renewed on/after this date follow new sub-rule (2).</b></li> </ul>
2	<b>VOS of corporate guarantee given if loan is partly availed or not availed &amp; ITC available:-</b>	<ul style="list-style-type: none"> <li>⇒ Value of service of providing a corporate guarantee is <b>based</b> on the <b>amount guaranteed (i.e. taking on risk of default)</b>, not loan actually disbursed to recipient of corporate guarantee.</li> <li>⇒ Recipients <b>can avail full ITC</b> regardless of when or how much of the loan is actually disbursed, subject to other specified conditions.</li> </ul>
3	<b>GST on takeover of existing loans which involves merely an assignment of an already issued corporate guarantee:-</b>	<ul style="list-style-type: none"> <li>⇒ Supplier of corporate guarantee service is the corporate entity providing guarantee to bank/FI, &amp; recipient is related entity for whom such guarantee is given.</li> <li>⇒ If loan issued by banking Co./FI is taken over by another banking Co./FI, this activity of takeover is not considered as a service of providing a corporate guarantee.</li> <li>⇒ <b>Thus, it does not impact GST.</b></li> </ul>

		<p>⇒ However, if the takeover of loan is followed/ accompanied by issuance of <b>fresh</b> corporate guarantee or an existing one is <b>renewed</b>, then <b>GST would be payable</b> on the same.</p>
4	<b>Amount on which GST is payable in case of multiple co-guarantor:-</b>	<p>⇒ When multiple related entities provide a corporate guarantee, value of service is the <b>sum of actual consideration</b> paid/payable to co-guarantors, if this total amount exceeds <b>1% of guaranteed amount</b>.</p> <p>⇒ If <b>total consideration is less than 1%</b> of guarantee offered, GST is payable by each co-guarantor proportionately on 1% of guaranteed amount.</p> <p>⇒ <b>For example</b>, if co-guarantors A and B guarantee ₹ 1 crore equally, each pays GST on 0.5% of the guaranteed amount. If A guarantees 60% and B guarantees 40%, A pays GST on 1% of ₹ 60 lakhs, and B on 1% of ₹ 40 lakhs.</p>
5	<b>GST under intra-group guarantees:-</b>	<p>⇒ For domestic corporates issuing intra-group guarantees, GST must be paid under the forward charge mechanism, with an invoice issued by the supplier to the related recipient u/s 31.</p> <p>⇒ If foreign/overseas entity provides such a guarantee for a related entity in India, GST is payable under RCM by the Indian related recipient.</p>
6	<b>Frequency of tax payment of tax (i.e. one time or on yearly/ monthly basis for a fixed term of 5/10 years as per tenure of loan):-</b>	<p>⇒ VOS of providing service of corporate guarantee to a bank/FI on behalf of a related recipient = 1% of guaranteed amount <b>per annum</b> or the actual consideration, whichever is higher.</p> <p>⇒ For multi-year guarantees, <b>value is 1% of guarantee offered per year multiplied by the number of years, or the actual consideration, whichever is higher</b>.</p> <p>⇒ For guarantees of <b>less than a year</b>, valuation is proportionate (e.g., c0.5% for six months) or the actual consideration, whichever is higher.</p> <p>⇒ <b>Example:-</b> A 5-year corporate guarantee is valued at higher of 5% (1% x 5 years) of guaranteed amount or the actual consideration, with GST payable on this amount at time of issuance of such guarantee.</p> <p>If 1 year guarantee is renewed annually for 5 years, GST is payable each year on higher of 1% of the guaranteed amount or the actual consideration in 1st year &amp; on every renewal in subsequent years.</p>
7	<b>Benefit of value declared in invoice = VOS</b>	<p>⇒ <b>Proviso to rule 28(2) is inserted</b> to provide benefit in cases involving supply of service of corporate guarantees provided between related persons also, where full ITC is available to recipient.</p> <p>⇒ Thus, <b>value declared in invoice shall be deemed to be VOS</b>.</p>
8	<b>Applicability of rule 28(2) for export of services</b>	<p>⇒ The retrospectively amended rule 28(2) (w.e.f. 26/10/23) shall not apply if the recipient of corporate guarantee services between related persons is located outside India.</p> <p>⇒ Therefore, these provisions <b>do not apply to export of such services</b>.</p>

## Newly added or updated questions from questionnaire

CCP 06.05.19.01

ABC Pvt. Ltd., an Indian company, provides a corporate guarantee of ₹15,00,00,000 to a bank on behalf of its related company, XYZ Pvt. Ltd., also located in India. The actual consideration for the guarantee is ₹2,00,000 per annum. XYZ Pvt. Ltd. is eligible for full Input Tax Credit (ITC). What will be the value of the supply of services for GST purposes, and how much GST will be payable if the applicable GST rate is 18%?

**Answer:-**

**Legal Provision:**

- ⇒ As per **Rule 28(2)** of CGST Rules 2017, The value of supply of services by a supplier to a related recipient in India, by providing a corporate guarantee to a bank or financial institution, shall be deemed to be 1% of the guarantee amount per annum or the actual consideration, **whichever is higher**.
- ⇒ If the recipient is eligible for full ITC, the value declared in the invoice shall be **deemed to be the value of said supply of services**.

**Discussion & Conclusion:**

- ⇒ In the given case, 1% of the guaranteed amount is ₹15,00,00,000 \* 1% = ₹15,00,000, which is higher than the actual consideration of ₹2,00,000 per annum.
- ⇒ Therefore, the deemed value for GST purposes is **₹15,00,000**.
- ⇒ However, since XYZ Pvt. Ltd. is **eligible for full ITC**, the value declared in the invoice can be **₹2,00,000**.
- ⇒ Hence, GST will be calculated on ₹2,00,000. The GST payable at 18% is ₹2,00,000 \* 18% = **₹36,000**.

### Question

In above case, would your answer differ if recipient is not eligible for full ITC &

- Guarantee is given for 3 years (VOS = 45,00,000 [15 Crores X 1% X 3yrs or ₹ 2 Lakhs, WIH])
- Guarantee is given for 4 months (VOS = 5,00,000 [15 Crores X 1% X 4/12 or ₹ 2 Lakhs, WIH])

### Clarification on valuation of supply of import of services by a related person where recipient is eligible to full ITC (Cir. No. 210/4/2024):-

**Issue:**

- ⇒ Demands are raised on RP in India for tax payable under RCM for activities undertaken by their related persons outside India, even when no consideration is involved, deeming it as supply under para 4 of Sch I.
- ⇒ Whether there shall be same treatment for foreign entities providing services to related parties in India (where full ITC is available to recipient) as is given to domestic related parties or distinct persons as per circular 199/11/2023?

**Legal Provision:-**

- ⇒ The above transaction is supply as per **para 4 of Sch I**.
- ⇒ For import of services by a RP in India from a related person located outside India, tax is payable by RP under RCM & recipient shall issue self-invoice **u/s 31(3)(f)**.
- ⇒ As per **2nd proviso to Rule 28**, the value declared in invoice is deemed to be OMV when recipient is eligible for full ITC.
- ⇒ If services are provided without an invoice, value may be declared as nil i.e. OMV is deemed as Nil.

**Clarification:** This **2nd proviso also applies** where services are provided between distinct or related persons, including foreign affiliate providing services to related domestic entity (**i.e. import of service**).



## Clarification on availability of ITC for warranty replacement of parts and repair services during warranty period [Cir. No. 195/07/2023 ]

- 1) d) What will be the answer if distributor replaces goods/its parts to customer under warranty out of his own stock on behalf of manufacturer & on requisition raised, later gets replenishment of said parts/goods from manufacturer? [Circular No. 216/10/2024 dt. 26.06.24]
- ⇒ The manufacturer provides the said goods/parts to distributor through a **delivery challan, without separately charging any consideration** at the time of such replenishment.
  - ⇒ Thus, **no GST is payable** on such replenishment.
  - ⇒ Further, **no reversal of ITC** is required to be made by manufacturer for goods/parts so replenished.

- 2) **Issue :- Nature of supply of extended warranty in certain cases [Cir. No. 216/10/2024]**
- Clarification:**
- (a) If customer enters into agreement of extended warranty with supplier of goods at the time of original supply, :-**
- Consideration for extended warranty becomes part of value of **composite supply, principal supply being SOG**, & GST is payable accordingly.
  - If supplier of extended warranty & supplier of goods are different, then extended warranty will be treated as a **separate taxable supply of service**.
- Comment:-** Sometimes supplier of goods may be a dealer while supplier of extended warranty may be OEM or 3rd party. Thus, both are different.
- b) If consumer enters into an agreement of extended warranty at any time after the original supply:**  
Supplier of extended warranty shall treat it as **supply of services distinct from original SOG** & pay GST accordingly on this service.

## Clarification on the requirement of reversal of ITC for the portion of premium for life insurance policies which is not included in taxable value (Cir. No. 214/8/2024)

**Facts:** Whether life insurance premium which is not included in taxable value as per Rule 32(4) will be treated as pertaining to an exempt supply/ non-taxable supply and whether ITC availed for such amount to be reversed or not as per sec 17(1) read with rule 42 & 43?

### Clarification:-

- ⇒ The amount of premium for taxable life insurance policies, which is not included in taxable value as per rule 32(4), **cannot be considered as pertaining to a non-taxable or exempt supply.**
- ⇒ Thus, there is **no requirement of reversal of ITC** as per sec 17(1) & (2) read with rule 42/43 for it.

## Mechanism for providing evidence of compliance of conditions of Sec 15(3)(b)(ii) by suppliers (Cir. No.-212/6/2024)

**Issue:** There is a need for a mechanism to verify whether ITC attributable to discounts given through tax credit notes (after supply is effected) has been proportionately reversed by recipient, as required by Sec 15(3)(b)(ii), as there is no existing facility for suppliers or tax officers to verify this on common portal.

### Clarification:

<b>Temporary Solution to verify</b>	Until a functionality is available on common portal, suppliers should obtain a certificate from recipient, issued by a CA or CMA, certifying the proportionate reversal of ITC by recipient for credit note issued by supplier.
<b>Details in Certificate</b>	<ul style="list-style-type: none"> <li>➤ Details of credit notes and corresponding invoice no.</li> <li>➤ Amount of ITC reversal for each credit note.</li> <li>➤ Details of FORM GST DRC-03/ return / any other relevant document through which such reversal of ITC is made.</li> </ul>
<b>Verification of Certificate</b>	CA/CMA certificates should include the Unique Document Identification Number (UDIN), which can be verified online from ICAI or ICMAI website.
<b>Simplified Procedure for Small Amount</b>	If tax amount (CGST+SGST+IGST+ compensation cess) involved in such discount does not exceed Rs 5,00,000 in a F.Y., an undertaking or certificate with above details from recipient can be accepted instead of CA/CMA certificate.
<b>Acceptable Evidence</b>	<ul style="list-style-type: none"> <li>⇒ CA/CMA certificates or recipient undertakings/certificate will be considered admissible evidence for compliance with Sec 15(3)(b)(ii).</li> <li>⇒ These shall be produced if tax officers require it during scrutiny, audits, or investigations, etc. for both current &amp; past periods, if required.</li> </ul>

## Whether GST is applicable on incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards & low value BHIM-UPI transactions (Cir. No. 228/22/2024)

<b>Clarification</b>	Further sharing of incentive amount by acquiring bank with other stakeholders, <ul style="list-style-type: none"> <li>- up to the point where the incentive is distributed in the proportion &amp; manner as decided by NPCI</li> <li>- in consultation with the participating banks under such notified Incentive Scheme,</li> </ul>
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# INPUT TAX CREDIT

## Sec 16 :- Eligibility & Conditions of ITC

5.	<b>Extension of Time limit</b>	Notwithstanding anything contained in sec 16 (4), in respect of an invoice or debit note for supply of goods or services or both <ul style="list-style-type: none"><li>➤ pertaining to the Financial Years 2017-18, 2018-19, 2019-20 &amp; 2020-21,</li><li>➤ the RP shall be entitled to take ITC in any return u/s 39 which is filed upto the 30th Nov 2021.</li></ul>				
6.	<b>Claiming ITC for Invoices Post-Revocation of Registration Cancellation</b>  <b>Newly Inserted by F.A. 2024 retrospectively effective from 01/07/17</b>	Where registration of a RP is cancelled u/s 29 and subsequently the cancellation of registration is revoked <ul style="list-style-type: none"><li>➤ by any order, either u/s 30 or</li><li>➤ pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of ITC in respect of an invoice or debit note was not restricted u/s 16(4) on the date of order of cancellation of registration, the said person <b>shall be entitled to take the ITC in respect of such invoice or debit note</b> for supply of goods or services or both, in a return u/s 39,--</li></ul> <table border="1" data-bbox="389 1136 1542 1664"><tr><td data-bbox="389 1136 446 1343">i.</td><td data-bbox="446 1136 1542 1343">➤ Filed upto 30th November following the F.Y. to which such invoice or debit note pertains or ➤ Furnishing of the relevant annual return, <b>whichever is earlier</b></td></tr><tr><td data-bbox="389 1343 446 1664">ii.</td><td data-bbox="446 1343 1542 1664">for the period<ul style="list-style-type: none"><li>➤ from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be,</li><li>➤ till the date of order of revocation of cancellation of registration, where such return is filed within 30 days from the date of order of revocation of cancellation of registration,</li></ul><b>whichever is later of above (i) &amp; (ii) .</b></td></tr></table> <p data-bbox="389 1664 1542 1779"><b>Note:-</b> No refund shall be made of all the tax paid or ITC reversed, which would not have been so paid, or not reversed, had sub-sec (5) &amp; (6) been in force at all material times.</p> <p data-bbox="389 1779 1542 1986"><b>Example:-</b> Can ABC Pvt. Ltd. claim ITC for a ₹1,00,000 invoice dated 20th July 2022, given that their GST registration was cancelled on 15th August 2022, revoked on 5th December 2023, and the return for the cancelled period was filed on 25th December 2023 with the annual return filed on 15th December 2023? Would your answer differ if, invoice date is 20th July 2020?</p> <p data-bbox="389 1986 1542 2185"><b>HINT:</b> 1) Yes, ITC for the invoice dated 20th July 2022 can be claimed 25th December 23 as this is the later of:- a. 30th November 2023 i.e. the earlier of 30th November 2023 or 15th December 2023 or b. 25th December 2023 i.e. the date of filing return for the period from 15th August 2022</p>	i.	➤ Filed upto 30th November following the F.Y. to which such invoice or debit note pertains or ➤ Furnishing of the relevant annual return, <b>whichever is earlier</b>	ii.	for the period <ul style="list-style-type: none"><li>➤ from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be,</li><li>➤ till the date of order of revocation of cancellation of registration, where such return is filed within 30 days from the date of order of revocation of cancellation of registration,</li></ul> <b>whichever is later of above (i) &amp; (ii) .</b>
i.	➤ Filed upto 30th November following the F.Y. to which such invoice or debit note pertains or ➤ Furnishing of the relevant annual return, <b>whichever is earlier</b>					
ii.	for the period <ul style="list-style-type: none"><li>➤ from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be,</li><li>➤ till the date of order of revocation of cancellation of registration, where such return is filed within 30 days from the date of order of revocation of cancellation of registration,</li></ul> <b>whichever is later of above (i) &amp; (ii) .</b>					

(cancellation date) to 5th December 2023 (revocation order date).  
 2) If invoice date is 20th July 2020 then last date of availing ITC is 30th Nov 2021 on that date registration was not cancelled. Hence, subsequent eligibility of ITC is restricted u/s 16(4). So, Provision of 16(6) is not applicable.

## Newly added or updated questions from questionnaire

### CCP 07.01.03.01

**ABC Pvt. Ltd. is engaged in the supply of electronic goods. During the FY 2022-23, the company's GST registration was cancelled on 15th August 2022. Subsequently, the cancellation was revoked on 5th February 2023 by an order from Appellate Authority. ABC Pvt. Ltd. filed return for the period for which registration stood cancelled on 25th February 2023. ABC Pvt. Ltd. has an invoice dated 20th July 2022 for goods supplied worth ₹1,00,000. Can ABC Pvt. Ltd. claim the ITC for the invoice dated 20th July 2022. Discuss with relevant provisions.**

**Note: ABC Pvt. Ltd. has furnished annual return on 15th December 2023.**

#### **Answer:- Legal Provision:**

- As per **Sec 16(6)** of CGST Act, if the registration of a registered person is cancelled u/s 29 and subsequently revoked u/s 30 or by an order from the Appellate Authority, Appellate Tribunal, or court, the registered person can claim ITC for the invoices or debit notes that were not restricted u/s 16(4) on the date of cancellation.
- Its ITC can be claimed in the return filed till the **later of** following dates:
  - Earlier of 30th Nov of following year or date of furnishing Annual return.
  - Return filed for period from the date of cancellation of registration or the effective date of cancellation of registration till the date of the order revoking the cancellation, if such return is filed within 30 days from the date of the revocation order.

#### **Discussion & Conclusion:**

- In the given case, ITC for the invoice dated 20th July 2022 will be claimed by the **later of:-**
  - a) 30th November 2023 i.e. the earlier of 30th November 2023 or 15th December 2023 or
  - b) 25th February 2023 i.e. the date of filing return for the period from 15th August 2022 (cancellation date) to 5th February 2023 (revocation order date).
- Thus ABC Pvt. Ltd. must claim the **ITC by 30th November 2023.**

### Rule 36: Documentary requirements and conditions for claiming ITC

<b>(3)</b>	<b>No ITC of tax paid towards demands involving fraud</b> <span style="background-color: #e91e63; color: white; padding: 2px;">Inserted by N/No. 20/2024</span>
	Tax paid in pursuance of any order where any demand has been confirmed on account of any <u>fraud, willful misstatement or suppression of facts u/s 74</u> cannot be availed as ITC. <span style="background-color: #e91e63; color: white; padding: 2px;">Inserted by N/No. 12/2024</span>
<b>(4)</b>	<b>Details of invoices/debit notes uploaded by the supplier in his GSTR-1, as amended in GSTR-1A if any, or using IFF &amp; such details are communicated in Form GSTR-2B of RP availing ITC</b>

## CBIC Clarifications

### Clarification on time limit for availing ITC u/s 16(4) for RCM supplies received from URPs & tax paid under RCM (Cir. No. 211/5/2024):-

**Clarification:-** ⇒ Registered recipient receiving supply from URP & also liable to pay tax under RCM has to issue invoice himself u/s 31(3)(f) & pays tax.

⇒ Based on such invoice, recipient becomes eligible to avail ITC.

⇒ Thus, **the relevant F.Y. for calculation of time limit u/s 16(4) to avail ITC shall be the F.Y. in which invoice is issued by recipient u/s 31(3)(f), subject to payment of tax & other conditions of sec 16 & 17.**

⇒ The F.Y. in which the supply was received is irrelevant here.

⇒ If recipient issues **invoice after its TOS** & pays tax, he has to pay interest on such delayed payment of tax & is also liable to **penal action u/s 122.**



**Availability of ITC in respect of Demo Vehicles purchase by dealer from manufacturer (Cir.no. 231/25/2024):-**

<b>Issue 1</b>	Authorised dealers purchase demo vehicles (seating capacity 13 or less) from manufacturers against tax invoices are used for trial run & demonstrate its features to potential buyers & then sold at WDV by paying GST.
<b>Clarification</b>	Demo vehicles are used for trial run & demonstrate its features to potential buyers. It's used to promote sale & thus, <b>are used for making 'further supply of such motor vehicles'</b> . Thus, ITC for demo vehicles is not blocked u/s 17(5)(a) i.e ITC is available. If demo vehicle is used for other purposes like transportation of its employees/management etc. where, they are not used for making 'further supply of such motor vehicles' & thus, ITC is blocked u/s 17(5)(a).
<b>Issue 2</b>	<b>If dealer merely acts as an agent/service provider to manufacturer for providing marketing service or test drive to potential customers on its behalf.</b>
<b>Clarification</b>	<ul style="list-style-type: none"> <li>⇒ Dealer doesn't buy &amp; sell vehicles directly on its own account.</li> <li>⇒ Instead, manufacturer issues sale invoice to customer.</li> <li>⇒ Dealer may sell said demo vehicle to a customer after specified time or kilometres as per agreement with manufacturer on payment of GST.</li> <li>⇒ Such demo vehicles are not used for making further supply of it. Thus, its ITC would be blocked.</li> </ul>
<b>Issue 3</b>	<b>ITC on demo vehicles if they are capitalized in books of account by authorized dealers</b>
<b>Clarification</b>	<ul style="list-style-type: none"> <li>⇒ If such vehicles are capitalized in books of dealer, it is <b>considered as "capital goods"</b>.</li> <li>⇒ Availability of ITC on demo vehicles is not affected by its capitalization in dealer's books, they <b>cannot claim ITC</b> on that tax component. <ul style="list-style-type: none"> <li>➤ If capitalized demo vehicle is <b>subsequently sold</b> by dealer, he shall have to <b>pay tax</b> as per <b>sec 18(6)</b>.</li> </ul> </li> </ul>

## Newly added or updated questions from questionnaire

CCP 07.04.10.00

Krishna Motors is a car dealer selling cars of an international car company. It also provides maintenance and repair services of the cars sold by it as also of other cars. It seeks your advice on availability of input tax credit in respect of the following expenses incurred by it during the course of its business operations:

- 1) Cars purchased from the manufacturer for making further supply of such cars. Two of such cars are destroyed in accidents while being used for test drive by potential customers. What would be your answer if Krishna Motors purchases a demo vehicle for demonstration purposes.
- 2) Works contract services availed for constructing a car parking shed in its premises [Study Mat]

Answer:

1.	<p><b>Legal Provision:</b></p> <p>⇒ As per <b>section 17(5)(a)</b> of CGST Act, ITC is <b>not available</b> on Motor vehicle for transportation of persons having approved seating capacity of not more than 13 persons (including driver), <b>except</b> when they are used for making taxable supplies for further supply of such motor vehicles.</p> <p><b>Discussion &amp; conclusion:</b></p> <p>⇒ Thus, ITC on cars purchased from the manufacturer for making further supply of such cars will be <b>allowed</b>.</p> <p>⇒ However, ITC on the cars fully destroyed in accident will <b>not be allowed</b> as the ITC on goods destroyed for whichever reason is specifically blocked u/s <b>17(5)(h)</b>.</p> <p>⇒ In second case, <b>CBIC clarified</b> that if the vehicle is solely used for demonstration purposes and not for passenger transport or training, then ITC is <b>not blocked u/s 17(5)(a)</b>.</p>
2.	<p><b>Legal Provision:</b></p> <p>⇒ As per <b>section 17(5)(c)</b> of CGST Act, ITC is <b>blocked</b> on works contract services supplied for construction of an immovable property (other than Plant &amp; Machinery) <b>except</b> where it is an input Service for further supply of works contract service.</p> <p><b>Discussion &amp; conclusion:</b></p> <p>⇒ In the given case, the car parking shed is not a plant and machinery, and the works contract service is not used for further supply of works contract service.</p> <p>⇒ Thus, ITC thereon will <b>not be allowed</b>.</p>

**Clarification on entitlement of ITC by insurance co. on expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement (Cir. No. 217/11/2024):-**

**Facts:**

- ⇒ Insurance co. provide general insurance for motor vehicles & handle repair/damages costs through either Cashless or Reimbursement modes.
- ⇒ Under both modes, repair invoices are issued by garages to insurance co.
- ⇒ For Cashless mode, insurers directly pay network garages for approved repairs, while for Reimbursement mode, policyholders (insured) pay non-network garages (with whom there is no routine business relationship of insurance co.) & are later reimbursed by insurers for approved repair/claim cost (accounted repairs liability).
- ⇒ Insurance co. avail ITC of tax paid for such repair services based on invoices issued by garages in both modes of settlement.

**Clarification:- Availability of ITC to insurance co. for repair expenses reimbursed by it in case of reimbursement mode of claim settlement:-**

- ⇒ Sec 17(5) provides that ITC for repair service of motor vehicles shall be available where received by a taxable person engaged in supply of general insurance services in respect of motor vehicles insured by him.
- ⇒ In reimbursement mode, the liability to pay for repair service for approved claim cost lies with insurance co., irrespective of fact that expense is first paid by insured to garage & then reimbursed to insured for approved claim cost.
- ⇒ **ITC is available to insurance co. (as a recipient) for such repair expenses incurred in reimbursement mode, since such service is used for outward supply of insurance services for such motor vehicles & it is not barred u/s 17(5).**

**Repairs invoices Not in Insurer's Name:-**

**Sec 16(2)(a) & (aa) is not satisfied & thus, ITC is not available to insurance co.**

**Clarification on availability of ITC on ducts & manholes used in the network of optical fiber cables (OFCs) u/s 17(5) (Cir. No. 219/13/2024)**

<b>Issue</b>	The Cellular Operators Association of India (COAI) reported that some tax authorities were denying ITC on ducts and manholes used in OFC networks for telecommunication services, considering them immovable property (other than plant & machinery). Whether such ITC is barred u/s 17(5)(c) & (d) read with explanation to sec 17?
<b>Clarification</b>	<ul style="list-style-type: none"><li>⇒ <b>Sec 17(5)(c) &amp; (d) restricts</b> ITC on certain items related to immovable property, excluding plant &amp; machinery.</li><li>⇒ Ducts &amp; manholes are integral to OFC network for providing telecommunication services (signals from one point to another, etc.) &amp; maintenance.</li><li>⇒ They are not classified as land, buildings, civil structures, telecommunication towers, or pipelines outside the factory premises.</li><li>⇒ Therefore, <b>ducts &amp; manholes fall under "plant &amp; machinery" &amp; are eligible for ITC &amp; not blocked u/s 17(5)(c) &amp; (d).</b></li></ul>



# PLACE OF SUPPLY (IGST Act)

## CBIC Clarifications

### Clarification on sec 10(1)(ca) of IGST Act on POS of goods to URPs (Cir. No. 209/3/2024):-

<b>Issue</b>	POS u/s 10(1)(ca) of IGST Act, if SOG is made to URP where billing address is different from address of delivery of goods, especially in supply through e-commerce platforms?
<b>Case</b>	Mr. A (URP) located in X State places an order on an e-commerce platform for mobile phone. He provides billing address located in X state but mobile is to be delivered at an address located in Y State. What shall be the POS?
<b>Clarification</b>	<ul style="list-style-type: none"><li>➔ For goods supplied through e-commerce platforms to URP, if billing address differs from the delivery address in invoice, <b>POS shall be the address of delivery of goods recorded on invoice i.e. State Y.</b></li><li>➔ Supplier may record the delivery address as address of recipient on invoice to determine POS in this case.</li></ul>

### Newly added or updated questions from questionnaire

#### CCP.08.05.07.01

XYZ Pvt. Ltd., a furniture manufacturer based in Rajasthan, receives an order from Mr. Sharma, an individual (unregistered person) residing in Delhi. Mr. Sharma purchases a dining table and requests delivery to his residence in Delhi. XYZ Pvt. Ltd. issues an invoice with Mr. Sharma's Delhi address and arranges for the delivery of the dining table through a third-party logistics provider. Determine Place of Supply and GST implications. Will the place of supply still be same, if Mr. Sharma instructs XYZ Pvt. Ltd. to deliver the dining table to another address located in Punjab which is recorded in invoice as address of delivery whereas the billing is done at Delhi's address?

**Answer :-Legal Provision :-**

- ➔ As per **section 10(1)(ca)** of IGST Act, if the supply of goods is made to unregistered person, the place of supply shall be the **location as per the address of the said person recorded in the invoice.**
- ➔ However, If the address of the unregistered person is not recorded in the invoice, the place of supply shall be the **location of the supplier.**
- ➔ **As per CBIC clarification**, if billing address differs from delivery address in invoice in case of supply of goods to unregistered person, **POS shall be address of delivery of goods recorded on invoice.**

**Discussion & Conclusion:**

- ➔ In the given case, the invoice issued by XYZ Pvt. Ltd. records Mr. Sharma's address in Delhi. Therefore, the place of supply for this transaction will be **Delhi.**
- ➔ Since the place of supply (Delhi) is different from the location of the supplier (Rajasthan), this transaction constitutes an **interstate supply.** Thus, liable to **IGST.**
- ➔ In second case, if billing address differs from the delivery address in invoice, **POS shall be the address of delivery** of dining table recorded on invoice i.e. **Punjab.**

### Clarification on POS applicable for custodial services provided by banks to Foreign Portfolio Investors (FPIs) (Cir. No.220/14/2024):-

<b>Issue</b>	Whether the custodial services provided by banks to FPIs will be treated as services provided to 'account holder' & POS shall be based on location of service provider (banks or FI) as per Sec 13(8)(a) of IGST Act?
<b>Custodial Services Definition</b>	<ul style="list-style-type: none"> <li>⇒ Custodial services <b>involve</b> safekeeping securities, managing accounts, collecting benefits, informing clients of actions, and reconciling records.</li> <li>⇒ Banks mainly manage securities accounts for FPIs through custodial agreements.</li> </ul>
<b>Clarification</b>	<ul style="list-style-type: none"> <li>⇒ Custodial services by banks/FIs to FPIs are <b>not treated as</b> services provided to an "account holder."</li> <li>⇒ These services are <b>not covered u/s 13(8)(a)</b> of the IGST Act, and POS should be determined under the <b>default provisions of Sec 13(2)</b>.</li> </ul>

### Clarification for advertising services provided by Indian advertising companies/ agencies to foreign clients (Cir.No. 230/24/2024):-

<b>Case</b>	<ul style="list-style-type: none"> <li>⇒ A foreign company hires an Indian advertising agency to manage all aspects of its advertising, such as media planning, content creation, and campaign monitoring.</li> <li>⇒ The agency then works with media owners in India to buy media space for the ads and track the campaign's progress.</li> <li>⇒ The media owners raise invoice to agency for the media costs, which the agency pays. Then, the agency raises invoices to the foreign client for its advertising services and receives payment in foreign currency.</li> </ul>
<b>Legal provision</b>	<ul style="list-style-type: none"> <li>⇒ Refer <b>sec 2(13) of IGST Act read with Circular no. 159/15/2021</b> for definition of intermediary, sec 2(93)(a) of CGST Act for definition of recipient.</li> <li>⇒ <b>Refer Sec 2(6), 13(2) &amp; 13(3) of IGST Act.</b></li> </ul>
<b>Is an advertising co. is an "intermediary" u/s 2(13) of the IGST Act, making POS u/s 13(8)(b)?</b>	<ul style="list-style-type: none"> <li>⇒ <b>The advertising agency has two separate agreements:</b> one with the foreign client and another with the media company. Invoices are issued based on these agreements.</li> <li>⇒ This setup means the advertising agency &amp; the media company are making independent transactions with each other, and there is no direct agreement between the media company and the foreign client.</li> <li>⇒ The advertising agency is <b>not acting as an agent</b> &amp; provides services to foreign client on its <b>own account</b>.</li> </ul> <p><b>Clarification:</b></p> <ul style="list-style-type: none"> <li>➤ The advertising agency is providing the main advertising services, including buying media space, to the foreign client on a principal-to-principal basis.</li> <li>➤ The agency is not considered an "intermediary" under the IGST Act.</li> <li>➤ POS <b>cannot be linked</b> with LOS of services as per <b>sec 13(8)(b)</b> of said Act.</li> </ul>



**Can a foreign client's representative in India or the target audience be considered the recipient of advertising services u/s 2(93) of the CGST Act?**

- ⇒ The foreign client is responsible for paying the advertising agency for the advertising services, **not the consumers** or target audience who see the ads.
- ⇒ Even if there is a representative or target audience in India, they are not considered the recipient of the services.
- ⇒ The advertising agency issues the invoice to the foreign client and receives payment directly from them.

**Clarification:** The recipient of the advertising services is the foreign client, not their Indian representative or the target audience in India, according to sec 2(93) of CGST Act.

**Can advertising services to foreign clients be considered performance-based u/s 13(3) of the IGST Act?**

- ⇒ **Section 13(3)(a)** of the IGST Act doesn't apply here, as the advertising service doesn't involve goods that need to be physically available with the supplier.
- ⇒ Similarly, **Section 13(3)(b) doesn't apply** because the foreign client or their representative doesn't need to be physically present to avail of the advertising service.
- ⇒ Therefore, the POS for advertising services is **not determined** by Section 13(3). Instead, it is determined u/s 13(2) of IGST Act.
- ⇒ Since the recipient is the foreign client located outside India, the POS is the location of the foreign client (outside India) u/s 13(2), making this an **export of services**, provided all export conditions are met.

**If an advertising co. in India acts as an agent for a foreign client in securing media space, what is the POS?**

- ⇒ The agreement for media space and ad broadcast is directly between the media owner and the foreign client, with the media owner directly invoices and receiving payment from the foreign client.
- ⇒ The advertising company only helps **facilitate** this process and does not provide the service itself.
- ⇒ The advertising company **invoices the foreign client for its facilitation services.**
- ⇒ Thus, advertising co. is an **"intermediary"** for facilitating this service & its POS shall be location of supplier (advertising co.) **as per sec 13(8)(b).**

**Clarification on POS of data hosting services provided by service providers located in India to cloud computing service providers located outside India (Cir. No. 232/26/2024):-**

**Legal provision**

- ⇒ Refer **sec 2(13) of IGST Act read with Circular no. 159/15/2021** for definition of intermediary.
- ⇒ **Refer sec 2(6), 13(3)(a), 13(8) & 13(4) of IGST Act.**

**Is a data hosting service provider an "intermediary" u/s 2(13) of IGST Act betw" cloud providers and end users? Are their services being intermediary services with POS u/s 13(8)(b)?**

- ⇒ The data hosting service provider either owns or leases a data centre, where they manage infrastructure and operations to offer data hosting services.
- ⇒ End users/customers/subscribers access cloud services provided by the cloud computing provider over the internet, **without the data hosting provider interacting** with them.
- ⇒ Thus, the data hosting provider offers services directly to the cloud computing provider, not acting as a broker or agent.

**Clarification:** This service is **not considered intermediary services**, so its place of supply cannot be determined u/s 13(8)(b).

<p><b>Are data hosting services provided in relation to goods "made available" by the recipient, with POS determined u/s 13(3)(a) of IGST Act?</b></p>	<ul style="list-style-type: none"> <li>➤ The data hosting service provider is an independent entity offering data hosting services to overseas cloud providers.</li> <li>➤ The hosting provider owns and manages all necessary infrastructure (hardware, power, security, etc.) and maintains it independently.</li> <li>➤ The cloud providers do not own or provide this infrastructure. Instead, the hosting service provider charges fees for its services as per specific agreements, operating as a separate entity.</li> </ul> <p><b>Clarification:</b></p> <ul style="list-style-type: none"> <li>➤ Data hosting services are not related to goods "made available" by the recipient (cloud provider) to the supplier (hosting provider), so the <b>POS cannot be determined u/s 13(3)(a)</b>.</li> <li>➤ Even if the cloud computing service <b>provider provides hardware</b>, the data hosting services are not considered to be provided in relation to the goods made available by the cloud provider.</li> <li>➤ Therefore, the <b>POS cannot be determined u/s 13(3)(a)</b>.</li> </ul>
<p><b>Are data hosting services provided in relation to "immovable property" with POS determined u/s 13(4) of IGST Act?</b></p>	<ul style="list-style-type: none"> <li>➤ Data hosting services are not passive services related to immovable property. Instead, they involve providing essential services for cloud computing to end users/customers/subscribers.</li> </ul> <p><b>Clarification:</b> Data hosting services <b>are not directly</b> linked to immovable property or physical premises, so the <b>POS cannot be determined u/s 13(4)</b>.</p>
<p><b>What is the POS for data hosting services provided by an Indian provider to overseas cloud computing service providers?</b></p>	<ul style="list-style-type: none"> <li>➤ The POS is not covered u/s 13(3) to 13(13).</li> <li>➤ Therefore, POS will be determined u/s 13(2), which is the location of the service recipient <b>i.e outside India</b>.</li> <li>➤ This can be treated as an <b>export of services</b> if all export conditions are met.</li> </ul>