

# The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)



**E-NEWSLETTER**  
**AUGUST - 2017**



## **Gandhidham** **Branch of WIRC of ICAI**

HAPPY INDEPENDENCE DAY



**2017**

## CHAIRMAN'S MESSAGE



“Manpower without Unity is not a strength unless it is harmonized and united properly, then it becomes a spiritual power”  
– Sardar Vallabhbhai Patel : Iron Man of India

## MANAGING COMMITTEE

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<b>CA ANIMESH MODI</b> Vice Chairman	- 909937733
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<b>CA RAJIV SINGH</b> Past Chairman	- 9879841029

### My Dear Professional Colleagues

August is the month that witnesses the maximum number of holidays and a lot of members take off on a mini vacation during the long weekends to enjoy with friends and family! The month traditionally celebrates lot of festivals include Raksha Bandhan, Janmashtami, Parsi New Year Paryusan Mahaparva & Samvatsari and Ganesh Chaturthi. I take this opportunity to wish all of you on these pious festivals. It is imperative to acknowledge that the only reason we can celebrate all these festivals is due to the secular fabric of our country. On 15th August we celebrate Independence Day. Let us resolve to fulfill our role of Partners in Nation Building, thus uplifting our society and country through our actions & deeds.

July is the month which kick starts the season for all the Chartered Accountants and specially for those who are into the conventional practice of Direct Tax and Audits. By the time this communication reaches you I am sure the Return filing for the Non corporate assesseees and the Non audited cases would be over. However Chartered Accountants will be busy with the Statutory audits and Tax audits. The tone is all set for the extremely busy and hectic working schedule ahead and looking to the same we at the branch have also changed the gears in terms of the programs for the members and students. We would be doing fewer programs than in past but I am sure that still the knowledge sharing drive will go on and programs on different topics will be arranged for our members and students with big appetite for knowledge and information.

The month of July, 2017 started with a big bang in the form of CA Day celebrations and the words were spread out to the whole world about the glory of the profession. We celebrated CA Day with lot many activities started Bike Rally, Flag Hoisting, Dust Bin Distribution to hawkers under Swachh Bharat Abhiyan, Distribution of Stationery Kit and Lunch to underprivileged children and musical evening of Antakshari and DJ with family members with full enthusiasm. 1<sup>st</sup> July, 2017 was also important day because the whole country entered into the new gamut of Indirect Taxation system in the form of Goods & Services Tax (GST).

I am happy to share the various activities with you that were carried out after the CA Day celebrations like the GST seminar on Industry Specific GST Impact Discussion under which specific industries covered where Real Estate & Developers, Import, Export & SEZ Issues, Shipping, Clearing & Forwarding, GTA, Small Traders and Composition Scheme. The program received overwhelming response in terms of participation and healthy discussion.

Gandhidham Branch organized cultural evening for the first time, for students as a part of CA Day Celebration. The evening was full of *dhamal* and excitement with performances like singing, dancing and drama prepared by students themselves. The event was attended by more than 150 students. Apart from cultural evening, a quiz competition organized for students. 5 teams participated for the competition and winner team will represent Gandhidham Branch at Western regional level quiz competition.

The result for CPT and CA Final was declared during this month. The results were very encouraging for the candidates. I welcome all the newly qualified Chartered Accountants to this Noble profession and Elite Club.

We would urge you to stay connected and continue to provide your unstinting support to all the endeavor of the Branch.

I end with few lines of hindi poet Shri Shridhar Pathak from “Bharat Geet”:

जय जय शुभ हिमाचल शृंगा  
कलरव-निरत कलोलिनी गंगा,  
भानु प्रताप-धमत्कृत अंगा,  
तेज पुंज तपवेश।  
जय जय प्यारा भारत देश।

जगमें कोटि-कोटि जुग जीवें,  
जीवन-सुलभ अमी-रस पीवें,  
सुखद वितान सुकृत का सीवें,  
रहे स्वतंत्र हमेश  
जय जय प्यारा भारत देश।

Jai Hind !

With warm regards  
CA Kartik Varaiya  
Chairman,  
Gandhidham Branch of WIRC of ICAI



**F.No 133/23/2016 -TM**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Direct Taxes**  
**(TPL Division)**

**Date 23rd March, 2017**

**Subject: Clarifications on Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Income-tax Act, 1961.**

Sub-section (1) of section 145 of the Income-tax Act, 1961 (the Act) provides that the income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Sub-section (2) of section 145 provides that the Central Government may notify **Income Computation and Disclosure Standards (ICDS)** for any class of assessee or for any class of income. Accordingly, the Central Government notified 10 ICDS vide **Notification No. S.O.892(E) dated 31st March, 2015** with effect from assessment year 2016-17.

After notification of **ICDS**, it has been brought to the notice of the Central Board of Direct Taxes ('the Board') by the stakeholders that certain provisions of ICDS may require amendment/clarification for proper implementation. The matter was referred to an expert committee. The Committee after duly consulting the stakeholders in this regard has recommended a two-fold approach for the smooth implementation of ICDS i.e. amendment to the provisions of ICDS in respect of certain issues and issuance of clarifications by way of FAQs for the rest of issues. Accordingly, vide Notification no 87. dated 29th September, 2016 Central Government notified amended ICDS with effect from the assessment year 2017-18.

Further, the issues which require further clarification have been considered by Board and following clarifications are issued:

**Question 1: Preamble of ICDS-I states that this ICDS is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purposes of maintenance of books of accounts. However, Para I of ICDS I states that it deals with significant accounting policies. Accounting policies are applied for maintenance of books of accounts and preparing financial statements. What is the interplay between ICDS-I and maintenance of books of accounts?**

**Answer:** As stated in the Preamble, ICDS is not meant for maintenance of books of accounts or preparing financial statements. Persons are required to maintain books of accounts and prepare financial statements as per accounting policies applicable to them. For example, companies are required to maintain books of account and prepare financial statements as per requirements of Companies Act 2013. The accounting policies mentioned in ICDS-I being fundamental in nature shall be applicable for



computing income under the heads “Profits and gains of business or profession” or “Income from other sources”.

**Question 2: Certain ICDS provisions are inconsistent with judicial precedents. Whether these judicial precedents would prevail over ICDS?**

The ICDS have been notified after due deliberation and after examining judicial views for bringing certainty on the issues covered by it. Certain judicial pronouncements were pronounced in the absence of authoritative guidance on these issues under the Act for computing Income under the head “Profits and gains of business or profession” or Income from other sources. Since certainty is now provided by notifying ICDS under section 145(2), the provisions of ICDS shall be applicable to the transactional issues dealt therein in relation to assessment year 2017-18 and subsequent assessment years.

**Question 3: Does ICDS apply to non-corporate taxpayers who are not required to maintain books of account and/or those who are covered by presumptive scheme of taxation like sections 44AD, 44AE, 44ADA, 44B, 44BB, 44BBA, etc. of the Act?**

**Answer:** ICDS is applicable to specified persons having income chargeable under the head ‘Profits and gains of business or profession’ or ‘Income from other sources’. Therefore, the relevant provisions of ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme. For example, for computing presumptive income of a partnership firm under section 44AD of the Act, the provisions of ICDS on Construction Contract or Revenue recognition shall apply for determining the receipts or turnover, as the case may be.

**Question 4: If there is conflict between ICDS and other specific provisions of the Income-tax rules, 1962 (‘the Rules’) governing taxation of income like rules 9A, 9B etc. of the Rules, which provisions shall prevail?**

**Answer:** ICDS provides general principles for computation of income. In case of conflict, if any, between the provisions of Rules and ICDS, the provisions of Rules, which deal with specific circumstances, shall prevail.

**Question 5: ICDS is framed on the basis of accounting standards notified by Ministry of Corporate Affairs (MCA) vide Notification No. GSR 739(E) dated 7 December 2006 under section 211(3C) of erstwhile Companies Act 1956. However, MCA has notified in February 2015 a new set of standards called ‘Indian Accounting Standards’ (Ind-AS). How will ICDS apply to companies which adopted Ind-AS?**

**Answer:** ICDS shall apply for computation of taxable income under the head “Profit and gains of business or profession” or “Income from other sources” under the Income Tax Act. This is irrespective of the accounting standards adopted by companies i.e. either Accounting Standards or Ind-AS.

**Question 6: Whether ICDS shall apply to computation of Minimum Alternate Tax (MAT) under section 115JB of the Act or Alternate Minimum Tax (AMT) under section 115JC of the Act?**

**Answer:** MAT under section 115.113 of the Act is computed on 'book profit' that is net profit as shown in the Profit and Loss Account prepared under the Companies Act subject to certain specified adjustments. Since, the provisions of ICDS are applicable for computation of income under the regular provisions of the Act, the provisions of ICDS shall not apply for computation of MAT.

AMT under section 115JC of the Act is computed on adjusted total income which is derived by making specified adjustments to total income computed as per the regular provisions of the Act. Hence, the provisions of ICDS shall apply for computation of AMT.

**Question 7: Whether the provisions of ICDS shall apply to Banks, Non-banking financial institutions, Insurance companies, Power sector, etc.?**

**Answer:** The general provisions of ICDS shall apply to all persons unless there are sector specific provisions contained in the ICDS or the Act. For example, ICDS VIII contains specific provisions for banks and certain financial institutions and Schedule 1 of the Act contains specific provisions for Insurance business.

**Question 8: Para 4(ii) of ICDS-I provides that Market to Market ( MTM) loss or an expected loss shall not be recognized unless the recognition is in accordance with the provisions of any other ICDS. Whether similar consideration applies to recognition of MTM gain or expected incomes?**

**Answer:** Same principle as contained in ICDS-I relating to MTM losses or an expected loss shall apply *mutatis Mutandis* to MTM gains or an expected profit.

**Question 9: ICDS-I provides that an accounting policy shall not be changed without 'reasonable cause'. The term 'reasonable cause' is not defined. What shall constitute 'reasonable cause'?**

**Answer:** Under the Act, 'reasonable cause' is an existing concept and has evolved well over a period of time conferring desired flexibility to the tax payer in deserving cases.

**Question 10: Which ICDS would govern derivative instruments?**

**Answer:** ICDS –VI (subject to para 3 of ICDS-VIII) provides guidance on accounting for derivative contracts such as forward contracts and other similar contracts. For derivatives, not within the scope of ICDS-VI, provisions of ICDS-1 would apply.

**Question 11: Whether the recognition of retention money, receipt of which is contingent on the satisfaction of certain performance criterion is to be recognized as revenue on billing?**

**Answer:** Retention money, being part of overall contract revenue, shall be recognised as revenue subject to reasonable certainty of its ultimate collection condition contained in para 9 of on Construction contracts.

**Question 12: Since there is no specific scope exclusion for real estate developers and Build -Operate- Transfer (BOT) projects from ICDS IV on Revenue Recognition, please clarify whether ICDS-III and ICDS-IV should be applied by real estate developers and BOT operators. Also, whether ICDS is applicable for leases.**

**Answer:** At present there is no specific ICDS notified for real estate developers, BOT projects and leases. Therefore, relevant provisions of the Act and ICDS shall apply to these transactions as may be applicable.

**Question 13: The condition of reasonable certainty of ultimate collection is not laid down for taxation of interest, royalty and dividend. Whether the taxpayer is obliged to account for such income even when the collection thereof is uncertain?**

**Answer:** As a principle, interest accrues on time basis and royalty accrues on the basis of contractual terms. Subsequent non recovery in either cases can be claimed as deduction in view of amendment to 5.36 (1) (vii). Further, the provision of the Act (e.g. Section 43D) shall prevail over the provisions of ICDS.

**Question 14: Whether ICDS is applicable to revenues which are liable to tax on gross basis like interest, royalty and fees for technical services for non-residents u/s. 115A of the Act.**

**Answer:** Yes, the provisions of ICDS shall also apply for computation of these incomes on gross basis for arriving at the amount chargeable to tax.

**Question 15: Para S of ICDS-V states expenditure incurred on commissioning of project, including expenditure incurred on test runs and experimental production shall be capitalized. It also states that expenditure incurred after the plant has begun commercial production i.e., production intended for sale or captive consumption shall be treated as revenue expenditure. What shall be the treatment of expense incurred after the conduct of test runs and experimental production but before commencement of commercial production?**

**Answer:** As clarified in Para 8 of ICDS-V, the expenditure incurred till the plant has begun commercial production, that is, production intended for sale or captive consumption, shall be treated as capital expenditure.

**Question 16: What is the taxability of opening balance as on 1<sup>st</sup> day of April 2016 of Foreign Currency Translation Reserve (FCTR) relating to non-integral foreign operation, if any, recognised as per Accounting Standards (AS) 11?**

**Answer:** FCTR balance as on 1 April 2016 pertaining to exchange differences on monetary items for non-integral operations, shall be recognised in the previous year relevant for assessment year 2017-18 to the extent not recognised in the income computation in the past.

**Question 17: For subsidy received prior to 1<sup>st</sup> day of April 2016 but not recognised in the books pending satisfaction of related conditions and achieving reasonable certainty of receipt, how shall the same be recognised under ICDS on or after 1<sup>st</sup> day of April 2016?**

**Answer:** Para 4 of ICDS-VII read with Para 5 to Para 9 of ICDS-VII provides for timing of recognition of government grant. The transitional provision in Para 13 of ICDS-VII provides that a government grant which meets the recognition criteria on or after 1st day of April 2016 shall be recognised in accordance with ICDS-VII. All government grants



actually received prior to 1st day of April 2016 shall be deemed to have been recognised on its receipt in accordance with Para 4(2) of ICDS-VII and accordingly will be outside the transitional provision and therefore the government grants received on or after 1st day of April 2016 and for which recognition criteria provided in Para 5 to Para 9 of ICDS-VII is also satisfied thereafter, the same shall be recognised as per the provisions of ICDS-VII. The grants received prior to 1st day of April 2016 shall continue to be recognised as per the law prevailing prior to that date.

For example, if out of total subsidy entitlement of 10 Crore an amount of 6 Crore is recognised in the books of accounts till 31st day of March 2016 and recognition of balance 4 Crore is deferred pending satisfaction of related conditions and/or achieving reasonable certainty of The balance amount of 4 Crore will be taxed in the year in which related conditions are met and reasonable certainty is achieved. If these conditions are met over two years, the amount of 4 Crore shall be taxed over the period of two years. The amount of 6 Crore for which recognition criteria were met prior to 1st day of April 2016 shall not be taxable post 1st day of April 2016.

But if the subsidy is already received prior to 1st day of April 2016, Para 13 of ICDS-VII shall not apply even if some of the related conditions are met on or after 1 April 2016. This is in view of Para 4(2) of ICDS-VII which provides that Government grant shall not be postponed beyond the date of actual receipt. Such grants shall continue to be governed by the provisions of law applicable prior to 1st day of April 2016.

**Question 18: If the taxpayer sells a security on the 30<sup>th</sup> day of April 2017. The interest payment dates are December and June. The actual date of receipt of interest is on the 30<sup>st</sup> day of June 2017 but the interest on accrual basis has been accounted as income on the 31<sup>st</sup> day of March 2017. Whether the taxpayer shall be permitted to claim deduction of such interest i.e. offered to tax but not received while computing the capital gain?**

**Answer:** Yes, the amount already taxed as interest income on accrual basis shall be taken into account for computation of income arising from such sale.

**Question 19: Para 9 of ICDS-VIII on securities requires securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value (NRV) at the end of that previous year, whichever is lower. Para 10 of Part-A of ICDS-VIII requires the said exercise to be carried out category wise. How the same shall be computed?**

**Answer:** For subsequent measurement of securities held as stock-in-trade, the securities are first aggregated category wise. The aggregate cost and NRV of each category of security are compared and the lower of the two is to be taken as carrying value as per ICDS-VIII. This is illustrated below

Security	Category	Cost	NRV	Lower of cost or NRV	ICDS Value
A	Share	100	75	75	
B	Share	120	150	120	
C	Share	140	120	120	
D	Share	200	190	190	
	<b>Total</b>	<b>560</b>	<b>535</b>	<b>505</b>	<b>535</b>
E	Debt Security	150	160	150	
F	Debt Security	105	90	90	
G	Debt Security	125	135	125	
H	Debt Security	220	230	220	
	<b>Total</b>	<b>600</b>	<b>615</b>	<b>585</b>	<b>600</b>
	<b>Securities Total</b>	<b>1160</b>	<b>1150</b>	<b>1090</b>	<b>1135</b>

**Question 20:** There are specific provisions in the Act read with Rules under which a portion of borrowing cost may get disallowed under sections like 14A, 4311, 40(a)(i), 40(a)(ia), 40A(2)(b), etc of the Act. Whether borrowing costs to be capitalized under ICDS-IX should exclude portion of borrowing costs which gets disallowed under such specific provisions?

**Answer:** Since specific provisions of the Act override the provisions of ICDS, it is clarified that borrowing costs to be considered for capitalization under ICDS IX shall exclude those borrowing costs which are disallowed under specific provisions of the Act. Capitalization of borrowing cost shall apply for that portion of the borrowing cost which is otherwise allowable as deduction under the Act.

**Question 21:** Whether bill discounting charges and other similar charges would fall under the definition of borrowing cost?

**Answer:** The definition of borrowing cost is an inclusive definition. Bill discounting charges and other similar charges are covered as borrowing cost.

**Question 22:** flow to allocate borrowing costs relating to general borrowing as computed in accordance with formula provided under Para 6 of ICDS-IX to different qualifying assets?

**Answer:** The capitalization of general borrowing cost under ICDS-IX shall be done on asset-by-asset basis.

**Question 23: What is the impact of Para 20 of ICDS X containing transitional provisions?**

**Answer:** Para 20 of ICDS X provides that all the provisions or assets and related income shall be recognised for the previous year commencing on or after 1<sup>st</sup> day of April 2016 in accordance with the provisions of this standard after taking into account the amount recognised, if any, for the same for any previous year ending on or before 31<sup>st</sup> day of March, 2016.

The intent of transitional provision is that there is neither 'double taxation' of income due to application of ICDS nor there should be escape of any income due to application of ICDS from a particular date. This is explained as under –

Provision required as per ICDS on 31 March 2017 for items brought forward from 31 <sup>st</sup> day of March 2016 ...(A)	INR 3 Crores
Provisions as per ICDS for FY 2016~17 ...(B)	INR 5 Crores
Total gross provision ...(C) = (A) + (B)	INR 8 Crores
Less: Provision already recognised for computation of taxable income in FY 2016-17 or earlier ...(D)	INR 2 Crores
Net provisions as per ICDS in FY 2016-17 to be recognised & per transition provision ...(E) = (C) — (D)	INR 6 Crores

**Question 24: Expenditure on most post-retirement benefits like provident fund, gratuity, etc. are covered by specific provisions. There are other post-retirement benefits offered by companies like medical benefits. Such benefits are covered by AS-15 for which no parallel ICDS has been notified. Whether provision for these liabilities are excluded from scope of ICDS X?**

**Answer:** It is clarified that provisioning for employee benefit which are otherwise covered by AS 15 shall continue to be governed by specific provisions of the Act and are not dealt with by ICDS-X.

**Question 25: ICDS-I requires disclosure of significant accounting policies and other ICDS requires specific disclosures. Where is the taxpayer required to make such disclosures specified in ICDS?**

**Answer:** Net effect on the income due to application of ICDS is to be disclosed in the Return of income. The disclosures required under ICDS shall be made in the tax audit report in Form 3CD. However, there shall not be any separate disclosure requirements for persons who are not liable to tax audit.

Lakshmi Narayanan  
Under Secretary TPI,  
CBDT



## **GST IMPACT STUDY ON GTA**

### **Introduction**

1. The most awaited Indirect tax reform, Goods and Services tax (GST) was made effective from 01st July, 2017. GST is aimed at making taxation system Good and Simple. In this article, I tries to analyse the impact of GST on 'Goods Transportation Agency' (GTA) service.

### **Whether 'Supply'?**

2. As per Section 7 of CGST Act, 2017, 'Supply' includes all forms of supply of Goods or Services or both made or agreed to be made for consideration by a person in the course or furtherance of business.

Services of GTA is a 'supply' of service where freight is the consideration and made by a person in the course of business. Hence, it is 'supply' liable to be taxed under GST subject to exemptions.

### **Taxability of 'Transport of Goods on Road' service**

3. Entry No. 18 of [Notification No. 12/2017 - Central Tax \(Rate\) dated 28.06.2017](#) exempts transportation of goods by road except the services of

- (i) A goods transport agency
- (ii) A courier agency

### **What is 'Goods Transport Agency'?**

4. As per definition 2(ze) of the Notification, 'goods transport agency' means any person who provides service in relation to transportation of goods by road and issues consignment note, by whatever name called.

### **What is 'Consignment Note'?**

5. Here, it will be interesting to note the meaning of consignment note and the persons who need to issue a consignment note. In Service Tax Rules, 1994, Explanation to Rule 4B defines 'consignment note' to mean *a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the names of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.*

There are plethora of case laws where the courts, various CESTAT held that "Only persons issuing consignment notes are covered within 'goods transport agency'; therefore, individual truck owners who do not book cargo and issue consignment note

*in normal course of business are, prima facie, not goods transport agency and, accordingly, services provided by them are not liable to service tax"*

It was observed by CESTAT New Delhi in case of *Birla Ready Mix v. Commissioner of Central Excise*, [2013] 39 STT 257/[2012] 28 taxmann.com 201 that "The mere fact that the operator is doing activity of transportation cannot make the operator a "Goods Transport Agency." The fact that part of the hire charges for the vehicles is being paid on the basis of number of kilometers run cannot alter the nature of the responsibility of the operators because such payment is consistent with a scheme of hiring the vehicle though it may be consistent with a contract for transportation of goods also. On the other hand a fixed charge per month for the vehicle is more consistent with a scheme of hiring the vehicle rather than a contract for transporting the goods.....the operator was responsible only for the vehicle and there is no custodial rights or responsibilities in matter of goods carried. This obviates the need to issue consignment notes which normally is a document of title for the goods when it is in the custody of the transporter. Since the appellants are responsible for the goods transported, consignment note, which is a document of title to the goods, is not issued."

CESTAT, New Delhi in case of *NandganjSihori Sugar Co. v. Commissioner of Central Excise*, [2014] 46 GST 570/47 taxmann.com 92 observed that "a consignment note issued by Goods Transport Agency represent its liability to transport the consignment handed over to it to the destination and deliver the same to the consignee and merely a bill issued for transportation of goods cannot be treated as Consignment Note."

### **Other Exemptions**

**6.** Entry 21 of Notification no. 12/2017 - Central Tax (Rate) dated 28.06.2017 - Services provided by GTA, by way of transport in a goods carriage of

- (a) Agricultural produce
- (b) Goods, where consideration charged for transportation of goods on a consignment transported on a single carriage does not exceed Rs. 1,500
- (c) Goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750
- (d) Milk, Salt and Food Grain including Flour, pulses and rice
- (e) Organic Manure
- (f) Newspaper or magazines registered with Registrar of Newspapers
- (g) Relief materials for victims of natural or man-made disasters, calamities, accidents or mishap
- (h) Defense or Military equipments

It is important to note the definition of 'Goods carriage' as per 2(zd) of above mentioned notification to mean definition assigned to it in Section 2(14) of Motor Vehicles Act, 1988. As per Said section, "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

Entry 22 of Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017- Services by way of giving on hire to a GTA, a means of transportation of Goods

### Who needs to pay tax?

7. In general, under indirect taxes, tax is collected from the buyer of Goods or receiver of services and the supplier pays to the Government. As per section 9(3) of CGST Act, 2017 tax shall be payable by recipient under reverse charge in certain notified cases. In this connection, attention needs to be drawn to [Notification No. 13/2017 - Central Tax \(Rate\) dated 28.06.2017](#) wherein Entry 1 talks of Goods Transport Agency service. As per the said entry,

Nature of Service - Transport of Goods by Road

Service Provider - Goods Transport Agency

Service Recipient - Any of the following:-

- (a) Any Factory registered under Factories Act, 1948
- (b) Any Society registered under Societies Registration Act, 1860 or any other law for time being in force in India
- (c) Any Co-operative Society established by or under any law
- (d) Any person registered under CGST/SGST/IGST/UTGST
- (e) Any body corporate established by or under any law
- (f) Any partnership firm whether registered or not including AOP (Association of Persons)
- (g) Any Casual Taxable person

Who needs to pay tax? - Recipient who is liable to pay freight is liable to pay tax under Reverse Charge.

Some of examples:-

<i>Service Provider</i>	<i>Consignor</i>	<i>Consignee</i>	<i>Person liable to pay Freight</i>	<i>Person liable to pay GST</i>
GTA	A Ltd (Whether or not registered under GST)	B & Co (Whether or not registered under GST)	A Ltd	A Ltd
GTA	A & Co (Whether or not registered under GST)	X (GSTIN: 37ABCDE1234F1ZQ)	X	X
GTA	A Co-Op Society Ltd (Whether or not registered under GST)	X (GSTIN: 37ABCDE1234F1ZQ)	A Co-Op Society Ltd	A Co-Op Society Ltd



GTA	A Ltd (Whether or not registered under GST)	B Ltd (Whether or not registered under GST)	B Ltd	B Ltd
GTA	A (GSTIN: NA)	V (GSTIN: 36PQRSTo987UZ1W)	A	GTA
GTA	A (GSTIN: NA)	R (GSTIN: 25ASDFG7654H1ZE)	R	R
GTA	A (GSTIN: NA)	S (GSTIN: NA)	S	GTA

### Registration

**8.** Every supplier shall be liable to be registered in the State from where he makes a taxable supply, if his aggregate turnover in a financial year exceeds Rs. 20 Lakhs.

Section 2(6) of CGST Act, 2017 defines Aggregate Turnover to mean Taxable Supplies, Exempt Supplies (Not leviable to tax + Nil rated + Exempt from Tax)

Hence, if a GTA is providing services of transportation of goods by road and having aggregate turnover of more than Rs. 20 Lakhs, they need to get registered under GST.

It is important to refer to [Notification No. 5/2017 - Central Tax dated 19.06.2017](#) wherein the person whose supplies are all taxed under reverse charge as per section 9(3) of CGST Act, 2017 need not register under GST Act considering the provisions of Section 23(2) of CGST Act, 2017.

Therefore, if a GTA is providing services of transportation of Goods to persons listed in the Entry 1 of [Notification No. 12/2017 - Central Tax \(Rate\) dated 28.06.2017](#), then GTA need not register taking shelter of [Notification No. 5/2017 - Central Tax dated 19.06.2017](#).

### Invoice Requirements

**9.** Rule 46 of CGST Rules, 2017 provides for contents of Invoice. Combined reading of Rules 46 and Rule 54(3) of CGST Rules, 2017, GTA shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing

- ◆ Name, Address and GSTIN of GTA
- ◆ Consecutive Serial Number, not exceeding 16 characters, in one or multiple series, containing alphabets, numerals or special characters ('-' or '/') unique for a financial year
- ◆ Date of issue
- ◆ Description of service
- ◆ Taxable Value of Supply
- ◆ Rate of Tax
- ◆ Amount of tax Charged

- ◆ Whether tax is payable in Reverse Charge
- ◆ The gross weight of the consignment,
- ◆ Name of the consigner and the consignee,
- ◆ Registration number of goods carriage in which the goods are transported,
- ◆ Details of goods transported,
- ◆ Details of place of origin and destination,
- ◆ Goods and Services Tax Identification Number of the person liable for paying tax whether as consigner, consignee or goods transport agency
- ◆ Signature or Digital Signature

## Input Tax Credit

**10.** Coming to Input tax credit, which is the most important advantage of GST; Notification No. 11/2017 - Central Tax (Rate) which notified rate on services; Entry 9 (iii) prescribes rate of 2.5% CGST on GTA Services with a condition that Credit of input tax on goods or services used in supplying the service has not been taken.

This restriction implies that input on goods or services used exclusively for providing GTA services cannot be taken and reversal to extent of GTA turnover when goods/services are used for provision of both taxable and GTA services as per provisions of Section 17 (2) of CGST Act, 2017.

Thus, If GTA is the person who is liable to pay tax, he cannot avail input tax credit on any goods or services used for providing GTA Services.

However, if tax is paid on GTA under Reverse charge as per Section 9(3) of CGST Act, 2017; can the tax paid under reverse charge on GTA Services be taken as ITC? is a question to be discussed. On careful reading of condition in Notification No. 11/2017 - Central tax (Rate) dated 28.06.2017; one can infer that the restriction of ITC is only on goods or services used in supplying the GTA service i.e. in case of reverse charge, the person paying tax will not use any goods or service to supply GTA service since he is a recipient of that service and is made liable to pay tax under reverse charge only and hence tax paid on GTA under reverse charge can be availed as ITC by the person paying the tax.

Also to be kept in mind, the provisions of section 9(4) of CGST Act, 2017 wherein the registered person is liable to pay tax under reverse charge if he receives goods or services from an unregistered person.

If a GTA is obtaining services of unregistered accountant for his accounting works, GTA needs to pay tax under reverse charge on the accountant fees since the accountant is unregistered but cannot avail ITC because the ITC is restricted. Let us take a case where GTA hires vehicles from other persons who own the goods carriage. In this case, since the activity of hiring goods carriage to GTA is exempt as per Notification no. 12/2017 - Central Tax (Rate) dated 28.06.2017, there will be no question of reverse charge and hence no question of eligibility of ITC.

## **Payment of Tax**

**11.** Tax shall be paid only in cash since no ITC is allowed to be availed. Modes of payment are:-

- ◆ Credit Card
- ◆ Debit card
- ◆ Internet Banking
- ◆ NEFT
- ◆ RTGS
- ◆ Over the Counter payment in case of tax payment up to Rs. 10,000

## **Returns**

**12.** If 100% of supplies made by GTA are taxed under reverse charge, there is no requirement of registration as per Notification No. 5/2017 - Central Tax dated 19.06.2017 and hence no question of Returns.

Otherwise, GTA shall file 3 monthly returns i.e. GSTR 1 containing the details of outward supplies made during the month to be filed on or before 10th of next month; GSTR 2 containing the details of inward supplies cannot be accepted by GTA since ITC is restricted but to be filed between 11th and 15th of next month and GSTR 3 which is the monthly return to be filed based on GSTR 1 & 2 and tax needs to be paid before filing the return.

## **Conclusion**

**13.** The opening remark of good and simple tax is questionable in case of GTA paying under reverse charge as per Section 9(4) but who is not able to take input because of restriction. However, it will be appreciated that the rate of tax on GTA is at concessional rate of 5% instead of regular rate on services which is 18%.



## **Summary of 20th GST Council Meeting held on 05.08.2017**

Previous Council Meeting (19<sup>th</sup>) – July 17, 2017 (Delhi)

Today's Council Meeting (20<sup>th</sup>) – August 5, 2017(Delhi)

Next Council Meeting (21<sup>st</sup>) – Sept 9, 2017(Hyderabad)

Agenda of meeting: – After 35 Days into the goods and services tax (GST) regime, the all-powerful GST Council have met on Saturday, August 05, 2017. Main agenda items of the **20th GST Council Meeting** include :

1. To Review the Progress of implementation of the new indirect tax,
2. Discussion on Anti-Profitteering,
3. Final Drafting of E-Way Bill

Union Finance Minister Arun Jaitley on Saturday chaired the 20<sup>th</sup> meeting of the GST Council which has decided :

Final Drafting of E way bills

Job work of all kinds of textiles will be taxed at 5%. Earlier some types of jobwork were taxed at 18%

Rates on tractor parts brought down to 18%

Government given work contracts like roads bridges canals will now be taxed at 12% with credits. Earlier this was 18%.

Anti profiteering mechanism will get kick started by appointing state wise committees

This was the 2nd meeting of the Council since the launch of the GST on 1 July and the 20th since it was set up in September last year.

Arun Jaitley (Finance Minister) said more than 71 lakh central and state taxpayers have migrated to the Goods and Services Tax (GST) system and have completed registration. Another 15.67 lakh new applications for registration have been received.

### **1. Final Drafting of E way bills**

GST Council finalised the e-way bill that mandates pre-registration of all goods worth over Rs 50,000 before they are moved for sale beyond 10 km.

Briefing reporters after the meeting, Finance minister said the date of application of the e-way bill would be notified shortly.

Exempted goods have been kept out of the purview of e-way bill – a minor relaxation from draft rules which required for all goods to be pre-registered under the e-way bill provision.

The permits thus issued would be valid for one day for movement of goods for 100 km and in same proportion for following days.

As per the draft provision, GSTN would generate e-way bills that will be valid for 1-20 days, depending on distance to be travelled – one day for 100 km, 3 days (100 to less than 300 km), 5 days (300-less than 500 km) and 10 days (500- less than 1,000 km)

“The Council decided to implement E-way bill across country.....There will be no check posts and process will be technology driven,” – Arun Jaitley (Finance Minister)

The E-way bill would be rolled out from October 1, said an official.

The minister said E-way bill will not be required to transfer exempted goods.

## **2. Anti Profiteering Mechanism**

The Council also gave in-principle approval to anti-profiteering measures and setting up of a Screening Committee in 15 days to see if tax reductions after implementation of GST have been passed on to consumers. Finance Minister said council members expressed that many business were not passing on the benefit of the input credit system to consumers via price cuts.

The finance minister appealed to the industry to pass on the benefit of the input tax credit to consumers saying that this mechanism is there as a deterrent

“There was a long discussion on anti profiteering.....Some industries not giving benefit of input tax credit. We want market mechanism to compel them to pass on the benefit,” Finance Minister said’.

Finance Minister said states and Centre screening committee that are being created should be used minimal. “But, it should be there as deterrent,”

## **3. GST Rate Cut**

GST Council decided to tax all job works in the textile sector, from embroidery to weaving, at 5 % instead of previously decided 18 %.

This 5 % will be applicable for job works in apparel, shawls and carpets.

To make farm equipment cheaper, tractor parts would attract the Goods and Services Tax (GST) rate of 18 % instead of 28 % previously.

Government work contracts would attract 12 % GST with input tax credit, Finance Minister said.

## **4. Revised GST Rate for Certain Services**

SN	Supply of Services	Old Rate	New Rate
1	Job work services in respect of the textiles and textile products (including MMF yarn, garments, made-ups, etc. falling in Chapters 50 to 63)	18%/5%	5%
2	Services by way of printing of newspapers, books (including Braille books), journals and periodicals where only content is supplied by	18% with full ITC	12% with
	the publisher and the physical inputs including paper used for printing belongs to the printer		full ITC

3	Services by way of printing of newspapers, books (including Braille books), journals and periodicals using physical inputs owned by others (including an unregistered publisher/supplier)	18% with full ITC	5% with full ITC
4	Works contract services provided to Government, local authority or governmental authority and in respect of post-harvest storage infrastructure for agricultural produce, mechanized food grain handling system	18% with full ITC	12% with full ITC
5	Margin/commission payable to Fair Price Shop Dealers by Central/ State Governments	18% with full ITC	NIL
6	Admission to planetarium	28% with full ITC	18% with full ITC

## 5. New Exemption from GST - Services

### SN Supply of Services

- 1 Goods required by FIFA and Services provided by and to FIFA and its subsidiaries in connection with FIFA U- 17 World Cup to be hosted in India in 2017 shall be exempted from GST
- 2 New crop insurance schemes Pradhan Mantri Fasal Bima Yojana (PMFBY) introduced from Kharif 2016- 17 in place of National Agricultural Insurance Scheme (NAIS) and Modified National Agricultural Insurance Scheme (MNAIS), and Restructured Weather Based Crop Insurance Scheme (RWCIS) introduced in place of Weather Based Crop Insurance Schemes, shall be extended **exemption from GST**

## 6. Option for GST Rate for Certain Services

SN	Supply of Services	Option for GST Rate
1	Rent-a-cab service	Allowed option of 12% GST with full ITC. 5% GST with no ITC will also continue
2	Goods Transport Agency Service (GTA)	Allowed option of 12% GST with full ITC under forward charge. 5% GST with no ITC will also continue. (However, the GTA has to give an option at the beginning of financial year)

## 7. Decision taken on Certain Services

SN	Supply of Services
1	In case of small house-keeping service providers (plumbers/carpenters) providing services through Electronic Commerce Operators (ECO), liability to pay GST placed on ECO
2	Partnership firm or a firm includes LLP (Limited liability Partnership) for the purposes of levy (including exemption there from) of GST on legal services.
3	To clarify that legal services (including representational services) provided by an individual advocate or a senior advocate or a firm of advocates (including LLP) provided to a business entity in taxable territory are covered under reverse charge mechanism

### What Next ?

Reduction in rate of tax on several other items recommended by the fitment committee would be discussed and decided”.



## Legal Update

### **1] Provision of Sec. 271(1)(c) Explanation 1 Explained**

**CIT v/s. Samurai Techno Trading P. Ltd. (2016) 389 ITR 357 (Ker)**

#### Issue

For levying penalty u/s 271(1)(c) how the effect of Explanation 1 to Sec. 271(1)(c) is to be given.

#### Held

Under section 271(1)(c) of the Income Tax Act, 1961, if any one of the officers mentioned therein is satisfied that any person has concealed the particulars of income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, the amount indicated. While appreciating the scope of clause (c), one has to take into account the provisions of Explanation 1 which is in two parts. Under clause (A) in respect of any facts material to the computation of the total income such person fails to offer an explanation or offers an explanation and the officer concerned has found it to be false. Clause (B) takes in three parts. The first part is that an explanation has been offered and the assessee is not able to substantiate it. The second part is that the assessee has failed to prove that such explanation offered by him is bona fide and the third part is that the assessee has failed to prove that all the facts relating to the same and material to the computation of his total income have been disclosed by him. In order to attract section 271(1)(c) read with clause (B) of Explanation 1, there must be a positive finding that in the explanation offered, the three elements have been established. The words "Furnishing inaccurate particulars of income" refer to the particulars of his income which have been furnished by the assessee and the requirement of "concealment of income" is that income has not been declared at all or is not even recorded in the books of account or in a particular case, the concealment of the particulars of income may be from the books of account as well as from the return furnished. Merely because the assessee has made certain claims, which were not accepted or was not acceptable to the Revenue, that itself would not attract the penalty under section 271(1)(c).

### **2] Sec. 201(1) and Sec. 201(1A) : Failure to deduct tax at source : Interest : Reasonable time**

**CIT v/s. Anagram Wellington Assets Management Co. Ltd. (2016) 389 ITR 654 (Guj)**

#### Issue

When no period for levy of interest u/s 201(1) and Sec. 201(1A) is prescribed in the Act what should be the reasonable period during which the power can be exercised ?

#### Held

Though no period of limitation is prescribed exercising power under section 201(1) and 1(A) of the Income Tax Act, still if such power is not exercised within a reasonable period it would become time barred. It is true that it is the duty of the assessee to deduct tax at source and the question is whether it is likely to cause any loss to the revenue if it is not deducted in time. If tax is not deducted at source, it is required to be paid in the first installment of advance tax, which is required to be paid within four months from the date of filing of the return. Loss that may be caused to the Revenue is only to the tune of interest of four months on delayed payment of tax. Not only that, when the declaration about this is made in the return, it comes within the knowledge of the Assessing Officer even if the tax is not deducted at source. Therefore, the period of four years is reasonable. The court cannot legislate but the Assessing Officer also cannot be given unfettered powers, which he can exercise even beyond the reasonable period of four years

### **3] Interpretation of Sec. 153A.**

**CIT v/s. Gurinder Singh Bawa (2016) 386 ITR 483 (Bom)**

#### **Issue**

How the provision of Sec. 153-A is to be interpreted ?

#### **Held**

The assessee challenged the validity of the assessment made under section 153A, on the grounds that no assessment in respect of the six assessment years was pending so as to have abated. The Tribunal accepted the assessee's submission and held that no incriminating material having been found during course of the search, the entire proceedings under section 153A were without jurisdiction and therefore, the addition made had to be deleted. On Appeal: Dismissing the appeal, that once an assessment was not pending but had attained finality for a particular year, it could not be subject to proceedings under section 153A of the Act, if no incriminating materials were gathered in the course of the search or during the proceedings under section 153A, which were contrary to and were not disclosed during the regular assessment proceedings.

### **4] Penalty 271 D : Limitation u/s 275**

**CIT v/s. Narayani & Sons (P) Ltd (2016) 289 CTR 301 (Cal)**

#### **Issue**

How the period of six months provided for levying penalty is to be calculated when the notice is issued by A.O ?

#### **Held**

Though Sec. 271D vests the jurisdiction of imposing penalty solely in the Jt. CIT, it is silent as regards initiation of the proceedings. The question is, can such initiation of proceedings be made by the AO? The AO is the person, who is likely to come across the cases of concealment or violation of the provisions of law attracting penal provisions. In a case falling under Sec. 271D the AO is not precluded from initiating the proceedings by issuing a notice. Once it is realized that the proceedings were initiated by AO on 26 Dec. 2006 when the notice was issued by the A.O. the period of limitation necessarily expired on 30 June, 2007 whereas the order imposing penalty was passed on 21<sup>st</sup> Sept, 2007 after issue of fresh notice on 26<sup>th</sup> July, 2007. No elaborate reasoning is required to demonstrate that the order is hit by limitation.

### **5] Delay in giving effect to CIT(A) Order : Cost awarded**

**R.G. Gaujar v/s. ITO (2016) 387 ITR 696 (Guj)**

#### **Issue**

Is the assessee entitled to relief granted by CIT(A) as early as possible ?

#### **Held**

Hon. Gujarat High Court censured the Department for its adamant attitude in not giving effect to the rectification order passed by the Commissioner (Appeals) in wilful disregard of its statutory duty under section 154(5) of the Act and for failure to comply with the express instructions of the Board in the matter of giving effect to appellate orders. Imposing a cost of Rs. 10,000/- on the Department, the court found the Department's justification that the matter has been carried in appeal before the Tribunal as misconceived.



## TWO DAYS MEGA CONFERENCE ON GST ON 2ND & 3RD JUNE, 2017





## CA DAY CELEBRATION ON 1ST JULY, 2017





## CA DAY CELEBRATION & CULTURAL EVENING BY CA STUDENTS ON 30TH JUNE 2017







**CA SANJAY RUHCHANDANI**



**CA SATISH KHUSHALANI**



**CA HARDIK MANIAR**



**CA RAJIV SINGH**

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