

**CLARIFICATIONS ISSUED BY CBIC ON VARIOUS ISSUES IN LINE WITH THE 53<sup>RD</sup> GST COUNCIL**  
**MEETING RECOMMENDATIONS**  
**26 JUNE 2024**

**Circular No.-209/2/2024-GST**

**Issue:**

What shall be the place of supply in terms of newly added clause (ca) of section 10(1) of the IGST Act, in case of supply of goods made to an unregistered person where billing address is different from the address of delivery of goods, especially in the context of supply being made through e-commerce platforms.

**E.g. Mr. A (Un-registered buyer), located in X State orders for mobile on e-commerce website with delivery address of Y State. What shall be the place of supply in that case?**

**Clarification:**

As per the circular, the place of supply shall be the **location of delivery of goods** as declared by the Buyer i.e. Y State.

**Circular No.-210/2/2024-GST**

**Issue:**

**What shall be value of supply in case of services from foreign affiliate including related person to a registered person in India who is eligible to claim full ITC?**

**Clarification:**

As per the 2<sup>nd</sup> proviso to Rule 28(1) of CGST Rules, in cases involving supply of goods or services or both between the distinct or related persons where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the said goods or services.

The same provision shall be applicable on services received from foreign related person/affiliate.

Accordingly, in case of import of services from foreign related persons/affiliates, the amount charged from registered person shall be deemed to be the open market value even if the consideration is Nil *provided* the recipient is eligible for Full ITC.

**Issue:**

**What is the time limit for claiming ITC u/s 16(4) of CGST Act incase of RCM supplies received from Un-registered persons?**

**Clarification:**

1. Incase of supplies from un-registered person attracting RCM liability u/s 9(3) or 9(4), the recipient is required to issue invoice u/s 31(3)(f).
2. The Rule 36(1)(b) prescribes that ITC shall be availed on the basis of the invoice issued u/s 31(3)(f).
3. The relevant financial year to determine the time limit u/s 16(4) shall be the FY in which the said invoice is issued by the recipient.

**Incase, the GST liability is paid under RCM after the time of supply, the interest on delayed payment shall be levied. This clarifies that ITC shall not be denied even incase of the delayed payment of GST.**

**Issue:**

What is the mechanism/functionality to ensure that the proportionate ITC has been reversed by the recipient to ensure the condition of Section 15(3)(b)(ii) of CGST Act, 2017, in case credit note issued for discount after the supply affected?

**Clarification:**

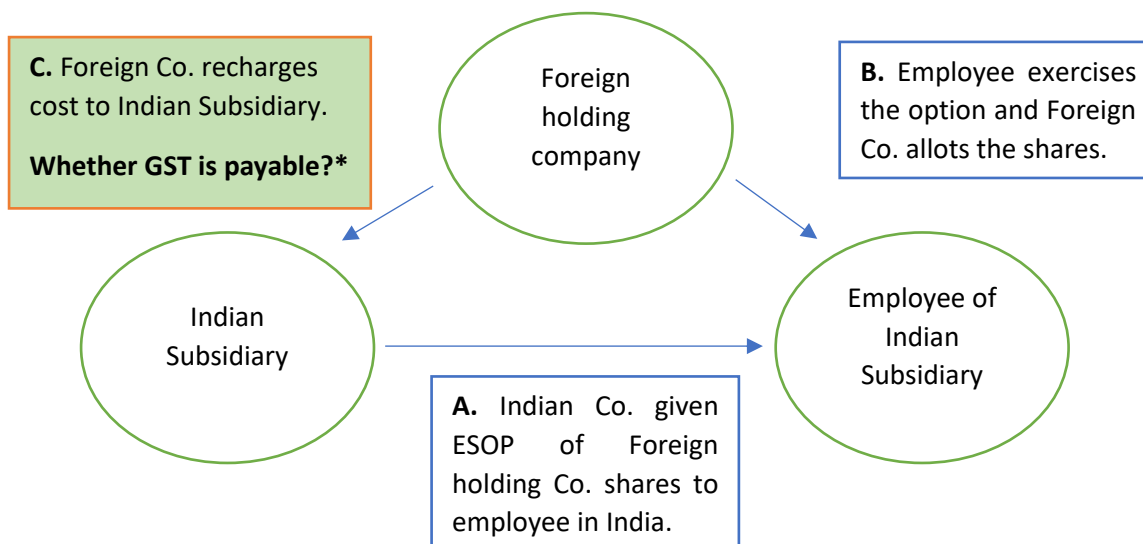
Till the functionality is not available, it is suggested that the supplier should obtain following documents as supporting from the recipient to ensure the compliance to Section 15(3)(b)(ii) of the Act:

1. **If the amount of GST involved in credit note for discount is more than Rs. 5 Lakhs**  
A CA/CMA certificate from the recipient that the ITC has been proportionately reversed by the recipient in in respect to the amount of credit note as required under the provisions of Section 15(3)(b)(ii) of the CGST Act, 2017 along with following information:
  - Detail of credit notes,
  - Invoice number against which credit note was issued,
  - The amount of ITC reversal i.r.t. each of said credit notes
  - Detail of Form DRC-03/other relevant document through which ITC was reversed.
2. **If the amount of GST involved in credit note for discount is not more than Rs. 5 Lakhs**  
Undertaking/certificate from the recipient that the said Input tax credit attributable to such discount has been reversed by the recipient along with following information:

- Details of credit notes,
- Invoice number against which credit note was issued,
- The amount of ITC reversal i.r.t. each of said credit notes
- Detail of Form DRC-03 or other relevant document through which ITC was reversed.

**Circular No. 213/5/2024-GST:**

**Transaction:**



\*The following conditions must be met to qualify the transaction of recovery out of the purview of GST.

1. **The ESOPs are transferred at the request of Indian Subsidiary company by Foreign holding company.**
2. **Reimbursement of such securities/ shares is done by Indian subsidiary company to foreign holding company on cost-to-cost basis i.e. equal to the market value of securities without any element of additional fee, markup or commission.**

Hence, it is clarified that no supply of service appears to be taking place between the foreign holding company and the Indian subsidiary company where the foreign holding company issues ESOP/ESPP/RSU to the employees of Indian subsidiary company, and the subsidiary company reimburses the cost of such securities/shares to the foreign holding company on cost-to-cost basis.

However, in cases where **an additional amount over and above the cost of securities/shares is charged by the foreign holding company**, by whatever name called, **GST would be leviable on such additional amount charged as consideration for the supply of services** of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. The GST shall be payable by the domestic subsidiary company on reverse charge basis in such a case on the said import of services.

### Circular No. 214/5/2024-GST:

#### Issue

Whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of CGST Rules applicable for life insurance business, shall be treated as pertaining to a non-taxable supply/ exempt supply for the purpose of reversal of Input tax credit as per section 17(1) of CGST Act read with Rule 42 & 43 of CGST Rules.

#### Clarification:

It is clarified that the amount of the premium for taxable life insurance policies, which is not included in the taxable value as determined under rule 32(4) of CGST Rules, cannot be considered as pertaining to a non-taxable or exempt supply and therefore, there is no requirement of reversal of input tax credit as per provisions of Rule 42 or rule 43 of CGST Rules, read with sub-section (1) and sub-section (2) of Section 17 of CGST Act, in respect of the said amount.

### Circular No. 215/5/2024-GST:

#### Issue:

Whether the insurance company is liable to pay GST on the salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle?

#### Clarification:

In cases where due to the conditions mentioned in the contract itself, **general insurance companies are deducting the value of salvage as deductibles from the claim amount**, the salvage remains the property of insured and insurance companies **are not liable to discharge GST liability on the same**.

However, in cases **where the insurance claim is settled on full claim amount, without deduction of value of salvage/ wreckage (as per the terms of the contract), the salvage becomes the property of the insurance company and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer**.

### Circular No. 216/5/2024-GST:

#### Issue 1:

**GST liability as well as liability to reverse input tax credit in respect of cases where goods as such or the parts are replaced under warranty:**

#### Clarification:

In cases where warranty is provided by the manufacturer/ suppliers to the customers in respect of any goods, and if any defect is detected in the said goods during the warranty period, the manufacturer may be required to replace either one or more parts or the goods as such, depending upon the extent of damage/ defect noticed in the said goods. However, Table in Para 2 of the said circular only clarifies in respect of the situations involving replacement of part/ parts and does not specifically refer to the situation involving replacement of goods as such. It is clarified that the clarification provided in Para 2 of the said circular is also applicable in case where the goods as such are replaced under warranty.

#### **Issue 2:**

**The distributor replaces the parts/ goods with the customer as part of warranty out of his own stock on behalf of the manufacturer and subsequently gets replenishment of the said parts/ goods from the manufacturer:**

#### **Clarification:**

There may be cases where the distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods or the parts, as the case may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. In such a case, no GST is payable on such replenishment of goods or the parts, as the case may be. **Further, no reversal of ITC is required to be made by the manufacturer in respect of the goods or the parts, as the case may be, so replenished to the distributor.**

#### **Issue 3:**

**Nature of supply of extended warranty, at the time of original supply of goods, as a separate supply from supply of goods, if the supply of extended warranty is made by a person different from the supplier of the goods:**

#### **Clarification:**

If a customer enters into an agreement of extended warranty with the supplier of the goods at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services.

#### **Issue 4:**

**Nature of supply of extended warranty, made after original supply of goods:**

**Clarification:**

In case where a consumer enters into an agreement of extended warranty at any time after the original supply, then **the same shall be treated as a supply of services distinct from the original supply of goods** and the **supplier of the said extended warranty shall be liable to discharge GST liability** applicable on such supply of services.”

**Circular No. 217/5/2024-GST:**

**Issue 1:**

The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders and settle the claims in two modes i.e., Cashless or Reimbursement. Whether ITC is available to insurance companies in respect of repair expenses reimbursed by the insurance company in case of reimbursement mode of claim settlement.

**Clarification:**

It has been clarified that ITC is available to Insurance Companies in respect of motor vehicle repair expenses incurred by them in case of reimbursement mode of claim settlement.

**Issue 2:**

Where the invoice raised by the garage also includes an amount in excess of the approved claim cost, the insurance company only reimburses the approved claim cost to the garage after considering the standard deductions viz. the compulsory deductibles to be borne by the insured, depreciation, improvements outside the coverage, value of salvage of the damaged parts of the motor vehicles, etc. The remaining amount is to be paid by the insured to the garage. What is the extent of ITC available to the insurer in such cases?

**Clarification:**

Where the garage issues 2 separate invoices in respect of the repair services,

- one to the insurance company in respect of approved claim cost and
- second to the customer for the amount of repair service in excess of the approved claim cost,

ITC may be available to the insurance company on the said invoice issued to the insurance company subject to reimbursement of said amount by insurance company to the customer.

If the invoice for full amount for repair services is issued to the insurance company while the insurance company makes reimbursement to the insured only for the approved claim cost, then, the

ITC may be available to the insurance company only to the extent of reimbursement of the approved claim cost to the insured, and not on the full invoice value.

**Issue 3:**

**Whether ITC is available to the insurer where the invoice for the repair of the vehicle is not in name of the insurance company.**

**Clarification**

**No.**

**Circular No. 218/5/2024-GST:**

**Issue:**

**The activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration in the nature of processing fee/ administrative charges/ loan granting charges etc., and the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not.**

**Clarification:**

Where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/ facilitating/ administering the loan by deeming the same as supply of services as per clause (c) of sub-section (1) of section 7 of the CGST Act.

However, in cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/ facilitating/ administering of the loan, which will be liable to GST as supply of services by the lender to the related person availing the loan.

**Circular No. 219/5/2024-GST:**

**Issue:**

**The input tax credit on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of sub-section (5) of section 17 of the CGST Act, 2017.**

**Clarification:**

It appears that ducts and manholes are covered under the definition of “plant and machinery” as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another. Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from the definition of “plant and machinery” in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.

Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fiber cables (OFCs), either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act 2017.

**Circular No. 220/5/2024-GST:**

**Issue:**

**The activity of providing Custodial Services by banks or financial institutions to FPIs will be treated as services provided to 'account holder' under Section 13(8)(a) of the IGST Act, 2017.**

**Clarification:**

It is clarified that the custodial services provided by banks or financial institutions to Foreign Portfolio Investors (FPI) are not to be treated as services provided to 'account holder' as per clarification given in Education Guide under Service Tax Regime, the custodial services are not considered to be covered under the services provided by bank to account holders, but have been considered to be covered under the services which are not provided to account holder. Therefore, the said services are not covered under Section 13(8)(a) of the IGST Act. Therefore, the place of supply of such services is not to be determined under Section 13(8)(a) of the IGST Act but has to be determined under the default provision i.e., sub-section (2) of section 13 of the IGST Act.

**Circular No. 221/5/2024-GST:**

**Issue:**

**Under HAM model of National Highways Authority of India (NHAI), the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over**

**a period of 15-17 years and the payment of the same is spread over the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model?**

**Clarification:**

It is clarified that the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier.

It is also clarified that as the installments/annuity payable by NHA to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/installment.

**Circular No. 222/5/2024-GST:**

**Issue:**

**In cases of spectrum allocation where the successful bidder (i.e. the 'telecom operator') opts for making payments in instalments as mentioned in the Notice Inviting Application (NIA) and Frequency Assignment Letter (FAL) issued by Department of Telecommunications (DoT), Government of India, what will be the time of supply for the purpose of payment of GST on the said supply of spectrum allocation services.**

**Clarification:**

It is clarified that in case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier, whereas in case where deferred payment is made by the telecom operator in specified installments, GST would be payable as and when the payments are due or made, whichever is earlier.

It is also clarified that the similar treatment regarding the time of supply, may apply in other cases also where any natural resources are being allocated by the government to the successful bidder purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services as per the definition under section 2(33) of the CGST Act, with the option of payments for the said services either through an upfront payment or in deferred periodic installments over the period of time.

*THE INFORMATION IS BASED ON THE GST LAW AND NOTIFICATIONS ISSUED TILL DATE. ANY AMENDMENT IN THE LAW WOULD CHANGE THE VIEW AS WELL.*

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