

Newsletter September 2018

Goods and Service Tax Act

INDEX

1. Articles

- ❖ Treatment of ITC in case of transfer of a business.....2

2. Recent Headlines

- ❖ Software to detect GST Defaulters.....4
- ❖ GST returns due date extended in Flood hit Kerala, Kodagu & Mahe.....4

3. Case Laws

- ❖ Centralized unit's employee services to other units.....5
- ❖ ITC on Motor Vehicles used to transport 'Cash'.....5

4. Notifications and Circulars for the period August 2018.....6

5. Due dates of GST for the month of September 2018.....7

ARTICLES:

Treatment of ITC on sale, merger, Amalgamation, Lease or Transfer of a business

It is quite often in business that we come across Sale, Merger, Amalgamation, Lease or Transfer of a business. For all such transactions we legally draft sale deed or Slump agreement, Lease deeds, utilise merger schemes etc and then we transfer the assets and liability including un-utilised GST - ITC from existing business to new business. However, under GST it is not enough with just legal agreements but a registered person has to comply with Rule 41 to transfer the un-utilised credit from existing business to new business. In this regard, a registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason furnish the details of such sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC 02. The form shall be filed electronically on the common portal along with a request for transfer of un-utilised input tax credit lying in his Electronic Credit Ledger to the transferee.

In the case of demerger, the ITC shall be apportioned in the ratio of the value of assets distributed to the new units as specified in the demerger scheme.

The transferor shall also submit a copy of a certificate issued by a practicing Chartered accountant or Cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilised credit specified in Form GST ITC-02 shall be credited to his electronic credit ledger. The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of accounts.

Thus, the relevant details are declared / uploaded by the transferor and transferee and the credits would be matched and verified in the portal. Since both the transferor and transferee provide the relevant details in the portal, there is no need for filing separate letter with the jurisdictional authorities. However, as a measure of abundant caution and as a precautionary measure such a procedure could be followed during the initial years.

Please find below the format of GST ITC – 02 for your reference

Format of Form GST ITC-02*

FORM GST ITC-02

[See Rule 41(1)]

Declaration for transfer of ITC in case of sale, merger, demerger, amalgamation, lease or transfer of a business under sub-section (3) of section 18

1.	GSTIN of transferor	
2.	Legal name of transferor	
3.	Trade name, if any	
4.	GSTIN of transferee	
5.	Legal name of transferee	
6.	Trade name, if any	

7. Details of ITC to be transferred

Tax	Amount of matched ITC available	Amount of matched ITC to be transferred
1	2	3
Central Tax		
State Tax		
UT Tax		
Integrated Tax		
Cess		

8. Particulars of certifying Chartered Accountant or Cost Accountant

- (a) Name of the Firm issuing certificate
- (b) Name of the certifying Chartered Accountant/Cost Accountant
- (c) Membership number
- (d) Date of issuance of certificate to the transferor
- (e) Attachment (option for uploading certificate)

9. Verification

I _____ hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of authorized signatory _____

Name _____

Designation/Status _____

Date --- dd/mm/yyyy

*Source: www.cbic.gov.in

RECENT HEADLINES:

New Software to detect GST defaulters

- ❖ A new software called 'GST-Pro', has been developed in-house by National Informatics Centre, Karnataka for the Commercial Taxes Department (CTD).
- ❖ The software has been used to detect large amounts of post-GST data which has provided the CTD sufficient information to identify the top tax defaulters.
- ❖ The Commercial Taxes Commissioner is quoted as saying "We have issued notices to defaulters; and in some cases, bank accounts have been attached too."
- ❖ The implementation of new software has not only eased assessment of defaulters, but also enables matching of data retrieved from multiple sources, which was not possible earlier. For example, by matching monthly returns and e-way bills, tax officials found that some dealers who had raised e-way bills had not filed their monthly returns.
- ❖ Unlike the previous Indirect Tax regimes, where the department shied away from using technology to ease compliance and identify defaulters; the GST regime seems to take tech as an aid to the next level.

GST Returns due date extended in Kerala, Kodagu, Mahe

- ❖ In the aftermath of the devastating floods that has battered Kerala, Kodagu & Mahe, the Centre has announced the extension of due dates for filing GST returns in these places
- ❖ The extension is only for businesses situated in Kerala and those that have their Principal place of business in Kodagu - Karnataka & Mahe - Puducherry.
- ❖ Form GSTR 3B for the month of July 2018 can be filed by 5th October 2018 and for the month of August 2018 can be filed by 10th October 2018.
- ❖ Form GSTR 1 for the month of July 2018 can be filed by 5th October 2018 and for the month of August 2018 can be filed by 10th October 2018.
- ❖ In the aftermath of the devastating floods which claimed countless lives and property, this comes as a relief to thousands of tax payers who would have otherwise been burdened with more liability in the form of late fees and interest.

CASE LAWS:

1. Decision on GST applicability on Centralized Unit's Employee services to units outside the state:

The applicant is a private limited company engaged in providing health care services. Activities are performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act). Whether such activities shall be treated as supply as per Entry 2 of Schedule I of the CGST Act, 2017 or it shall not be treated as supply of services as per Entry 1 of Schedule III of the CGST Act, 2017?

Law: - Entry 2 of Schedule I of the CGST Act, 2017 deals with supplies made to distinct persons without consideration which is subject to GST and Entry 1 of Schedule III of the CGST Act, 2017 deals with Services by employees to employers which are not considered as supplies and GST is not applicable.

The AAR held that, the services provided to the employer, i.e. the corporate office by the persons employed by the corporate office are in the nature of the employee-employer relationship. Further, since the corporate office and the units are distinct persons under the Act, there is no such relationship between the employees of one distinct entity with another distinct entity, at least as per the Goods and Service Tax Acts, even if they are belonging to the same legal entity. Hence, the activities made between the related persons are treated as supplies and the valuation includes all costs including the employee cost and GST shall be chargeable on such supplies.

2. Decision on Input Tax Credit available for Motor Vehicles:

The Applicant is engaged in the service of 'Cash Management' and transports cash for banks. For this purpose, the applicant purchases or hires Motor vehicles and uses them for transporting both cash and bullion.

Law: As per sec. 17(5) of the CGST Act, 2017 Input Tax Credit is not available in case of Motor Vehicles unless they are used for the transportation of goods. However, as per sec. 2 (52) "goods" means every kind of movable property other than **money** and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

The AAR held that, in case of transportation of cash, which refers to money as per sec. 2 (52) of the CGST Act, 2017, Input Tax Credit shall not be available as goods does not include money and sec. 17(5) of CGST Act, 2017 disallows credit if the motor vehicles are used for transportation of anything other than goods.

Notifications and Circulars for the period August 2018

- Eight Central Tax Notifications issued.
- One Central Tax (Rate) & One Integrated Tax (Rate) & One Union Territory Tax (Rate)
- Four Circulars and One Order under CGST issued.

SI No	Subject	Notification / Circular No. & Date of Issue
1	Seeks to lay down the special procedure for completing migration of taxpayers who received provisional IDs but could not complete the migration process.	31/2018-Central Tax ,dt. 06-08-2018
2	Seeks to prescribe the due dates for furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of more than Rs. 1.5 crores for the months from July, 2018 to March, 2019	32/2018-Central Tax ,dt. 10-08-2018
3	Seeks to prescribe the due dates for quarterly furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of up to Rs.1.5 crores for the period from July, 2018 to March, 2019	33/2018-Central Tax ,dt. 10-08-2018
4	Seeks to prescribe the due dates for filing FORM GSTR-3B for the months from July, 2018 to March, 2019	34/2018-Central Tax ,dt. 10-08-2018
5	Seeks to extend the due date for filing of FORM GSTR-3B for the month of July, 2018	35/2018-Central Tax ,dt. 21-08-2018
6	Seeks to extend the due dates for filing FORM GSTR-3B for the months of July, 2018 and August, 2018	36/2018-Central Tax ,dt. 24-08-2018
7	Seeks to prescribe the due dates for furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of more than Rs. 1.5 crores for the months of July, 2018 and August, 2018	37/2018-Central Tax ,dt. 24-08-2018
8	Seeks to prescribe the due dates for quarterly furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of up to Rs.1.5 crores for the quarter July, 2018 to September, 2018.	38/2018-Central Tax ,dt. 24-08-2018
9	Seeks to exempt payment of tax under section 9(4) of the CGST Act, 2017 till 30.09.2019.	22/2018-Central Tax (Rate) ,dt. 06-08-2018
10	Seeks to exempt payment of tax under section 5(4) of the IGST Act, 2017 till 30.09.2019.	23/2018-Integrated Tax (Rate) ,dt. 06-08-2018
11	Seeks to exempt payment of tax under section 7(4) of the UT GST Act, 2017 till 30.09.2019.	22/2018-Union Territory tax(rate), dt. 06-08-2018
12	Circular No. 52/26/2018-GST dated 09.08.2018 i.r.o. clarification regarding applicability of GST rates on various goods and services.	52/2018
13	Circular No. 53/27/2018-GST dated 09.08.2018 i.r.o. clarification regarding applicability of GST on petroleum gases retained for the manufacture of petrochemical and chemical products	53/2018
14	Circular No. 54/28/2018-GST dated 09.08.2018 i.r.o. classification of fertilizers supplied for use in the manufacture of other fertilizers at 5 % GST rate.	54/2018
15	Taxability of services provided by Industrial Training Institutes (ITI) .	55/2018
16	Clarification on removal of restriction on refund of accumulated Input Tax Credit on fabrics	56/2018

17	Constitution of Standing Committee under sub-rule (4) of rule 97 of Central Goods and Services Tax Rules, 2017	Order-03/2018-GST
----	--	-------------------

Due dates of GST for the month of September 2018

2018		September				
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
27	28	29	30	31	01	02
03	04	05	06	07	08	09
10	11 GSTR 1 (Aug 18) *	12	13	14	15	16
17	18	19	20 GSTR 3B (Aug 18), GSTR 5 (Aug 18), GSTR 5A (Aug 18)	21	22	23
24	25	26	27	28	29	30 GSTR 6 (Jul 17 - Aug -18)
01	02	Notes: * Monthly return for tax payer with Annual Turnover more than Rs. 1.50 Cr				

Disclaimer:

The conclusion reached and views expressed in the Newsletter are matters of opinion based on your understanding of the facts, anticipated tax laws and anticipated rules. However, there can be no assurance that the tax authorities or regulators may take a position contrary to our views. Further, the content of this newsletter should not be used as a supporting to frame any opinions.

The information cited in this newsletter has been drawn from various sources. While every effort has been made to keep the information cited in this newsletter error free. Vinay and Keshav LLP Chartered Accountants does not take the responsibility for any typographical or clerical error which may crept in while compiling the information provided in this newsletter.