

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC and FEMA during the last month for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. You are requested to please submit your feedback and suggestions on the column at eboard@icai.in



(Matter on Direct Taxes has been contributed by the Direct Taxes Committee of the ICAI)

1. Substitution of Rule 17A and Form 10A pertaining to Application for registration of charitable or religious trusts, etc. - Notification No. 10/2018, dated 19-02-2018

The provisions of Section 12A provide for conditions for applicability of Sections 11 and 12 in relation to the benefit of exemption in respect of income of any trust or institution. Section 12A(1)(aa) provides that the person in receipt of the income has to make an application for registration of the trust or institution on or after 01.06.2007 in the prescribed form and manner to the Principal Commissioner or Commissioner. The Finance Act, 2017 has inserted clause (ab) to Section 12A(1) to provide that where a trust or an institution has been granted registration under Section 12AA or has obtained registration at any time under Section 12A and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, it shall be required to obtain fresh registration by making an application within a period of thirty days from the date of such adoption or modifications of the objects in the prescribed form and manner.

Accordingly, vide this notification, Rule 17A pertaining to application for registration of charitable or religious trusts, etc. has been substituted along with Form No. 10A. Important changes in Rule 17A are as follows:

- (i) Form 10A to be furnished electronically now. Earlier, the same needs to be furnished in duplicate in hard copy.
- (ii) Electronic Application in Form 10A to be accompanied by following documents:
 - (a) where the trust is created, or the institution is established, under an instrument, self-certified copy of the instrument creating the trust or establishing the institution; (earlier original copy of the instrument has to be furnished along with a copy thereof. However, at the discretion of Commissioner, a certified copy in lieu of the original can be furnished if original instrument cannot conveniently be produced).
 - (b) where the trust is created, or the institution is established, otherwise than under an instrument, self-certified copy of the document evidencing the creation of the trust, or establishment of the institution; (earlier original copy of the document has to be furnished along with a copy thereof. However, at the discretion of Commissioner, a certified copy in lieu of the original can be furnished if original document cannot conveniently be produced).
 - (c) self-certified copy of registration with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts, as the case may be;
 - (d) self-certified copy of the documents evidencing adoption or modification of the objects, if any;
 - (e) where the trust or institution has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts (earlier two copies) of the trust or institution relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up;
 - (f) note on the activities of the trust or institution;
 - (g) self-certified copy of existing order granting registration under Section 12A or Section 12AA, as the case may be; and
 - (h) self-certified copy of order of rejection of application for grant of registration under Section 12A or Section 12AA, as the case may be, if any.
- (iii) Form No. 10A shall be verified by the person who is authorised to verify the return of income under Section 140, as applicable to the assessee.

Further, Form No. 10A has also been comprehensively modified to now require email Id and mobile number of the Managing Trustee/Chairman/Managing Director/Any authorised person by whatever name called as well as Aadhaar number of the author(s)/founder(s)/trustees/office bearers/directors. For further details, notification may be referred.

2. Revised Double Taxation Avoidance Agreement (DTAA) between India and Kenya notified - Notification No. 11/2018, dated 19-02-2018

The Double Taxation Avoidance Agreement (DTAA) between India and Kenya was signed and notified in 1985. Subsequently, the DTAA was renegotiated and a revised DTAA was signed between both countries on 11.07.2016.

Some of the key features of the revised DTAA are highlighted as under:

- i. In order to promote cross border flow of investments and technology, the revised DTAA provides for reduction in withholding tax rates from 15% to 10% on dividends, from 15% to 10% on interest, from 20% to 10% on royalties and from 17.5% to 10% on fees for management, professional and technical services.
- ii. The revised DTAA provides for a new Article on Limitation of Benefits to allow treaty benefits to bonafide residents of both countries, to combat treaty abuse by third country residents and to allow application of domestic law to prevent tax avoidance or evasion.
- iii. The Article on Exchange of Information has been updated to the latest international standard to provide for exchange of information, including the information held by the bank or financial instrument for tax purposes, to the widest possible extent.
- iv. A new Article on Assistance in Collection of Taxes has also been provided in the revised treaty which will enable assistance in collection of tax revenue claims between both countries.

The revised DTAA will improve transparency in tax matters, help curb tax evasion and tax avoidance, remove double taxation and will stimulate the flow of investment, technology and services between India and Kenya.

3. Notification of the new scheme called the Centralised Communication Scheme, 2018-Notification No. 12/2018, dated 22-02-2018

Section 133C empowers the prescribed income-

tax authority to issue notice calling for information and documents for the purpose of verification of information in its possession. Further, Section 133C(3) empowers the CBDT to make a scheme for centralised issuance of notice calling for information and documents for the purpose of verification of information in its possession, processing of such documents and making the outcome thereof available to the Assessing Officer for necessary action, if any.

Accordingly, vide this notification, the CBDT has notified a new scheme called 'the Centralised Communication Scheme, 2018'. In brief, the Scheme provides the following:

- (i) Issue and Service of Notice- Under this Scheme, the notice(s) shall be served electronically through e-mail, or by placing a copy in the registered account on the portal followed by an intimation by Short Message Service (SMS). The notice(s) shall be issued under digital signature of the designated authority. The information or documents called for via the aforesaid notice(s) shall be furnished on or before the date specified. The designated authority is also required to run sustained campaign to ensure compliance by way of sending e-mails, SMS, reminders, letters and outbound calls.
- (ii) Response to Notice(s)- The Centralised Communication Centre (CCC) may prescribe a machine readable structured format for furnishing the information or documents by the person in response to the issued notice. The PDGIT (Systems) or the DGIT (Systems) shall specify the procedure, formats and standards for furnishing response to the notices.
- (iii) No personal appearance- No person shall be required to appear personally or through authorised representative before the designated authority at the CCC in connection with any proceedings.
- (iv) Power to Specify procedure and processes- The PDGIT (Systems) or DGIT (Systems) shall specify from time to time, procedures and processes for effective functioning of the CCC, including the matters specified therein the Scheme.

The complete text of the above Notifications can be downloaded from the link below: <http://www.incometaxindia.gov.in/Pages/communications/notifications.aspx>

II. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM

1. Signing of DTAA by India and Iran on 17th February, 2018– Press Release, dated 17-02-2018

India and Iran signed an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income, at New Delhi on 17.02.18.

The Agreement is on similar lines as entered into by India with other countries. The Agreement will stimulate flow of investment, technology and personnel from India to Iran & vice versa, and will prevent double taxation. The Agreement will provide for exchange of information between the two Contracting Parties as per latest international standards. It will improve transparency in tax matters and will help curb tax evasion and tax avoidance.

The Agreement also meets treaty related minimum standards under G-20 OECD Base Erosion & Profit Shifting (BEPS) Project, in which India participated on an equal footing.

2. CBDT achieves important milestone of 200 Advance Pricing Agreements (APAs)– Press Release, dated 01-03-2018

The CBDT entered into seven more APAs during the month of February, 2018. All the seven are Unilateral APAs. With the signing of these Agreements, the CBDT has crossed the important milestone of having signed 200 APAs.

The total number of APAs entered into by the CBDT till date has gone up to 203. This includes 185 Unilateral APAs and 18 Bilateral APAs. In the current financial year, the CBDT has entered into 51 APAs so far (44 Unilateral APAs and 7 Bilateral APAs).

The seven APAs signed in February pertain to the Pharmaceuticals, Automobiles, Financial and Food & Beverages sectors of the economy. The international transactions covered in these agreements include Manufacturing, Provision of Software Development Services, Provision of IT enabled Services, Payment of Royalty, Provision of Contract R&D Services, Provision of Marketing Support Services, Distribution, AMP Expenses, Provision of Engineering Design Support Services, Provision of Sourcing Support Services, Payment of Interest, etc.

The APA provisions were introduced in the Income-tax Act, 1961 in 2012 and the “Rollback” provisions were introduced in 2014. The APA scheme endeavours to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods

of pricing and setting the prices of international transactions in advance.

The progress of the APA scheme strengthens the Government’s resolve of fostering a non-adversarial tax regime. The Indian APA programme has been appreciated nationally and internationally for being able to address complex transfer pricing issues in a fair and transparent manner. It has contributed significantly towards improving the ease of doing business in India.



(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

GOODS & SERVICES TAX

1. Non-transition of CENVAT credit in certain cases

The Central Government vide Circular No.33/07/2018-GST dated 23rd February, 2018 has clarified that transition of CENVAT credit is not admissible in following cases:

Non-utilisation of Disputed credit carried forward

CENVAT credit pertaining to which a show-cause notice was issued under Rule 14 of the CENVAT Credit Rules, 2004, which has been adjudicated and where in the last adjudication order or the last order-in-appeal, as it existed on 1st July, 2017, it was held that such credit is not admissible, then such CENVAT credit is not admissible and shall not be utilised by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, till the order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in existence.

If such disputed credit is utilised, it shall be recovered from the tax payer, with interest and penalty as per the provisions of the Act.

Comment: It is interesting that recovery of transitional credit is mentioned when the matter is pending in appeal. On one hand, there has been an amendment in Section 35F where on payment of 7.5%/10% the remainder of disputed tax will not be recovered and on the other the same tax albeit disputed, is sought to be recovered. Tax payer, at the peril of interest, is welcome to utilise this tax but CBEC seems to think otherwise.

Non-transition of Blocked Credit

CENVAT credit as is carried forward in the

return relating to the period ending with the day immediately preceding the appointed day which is not eligible under the Act in terms of sub-Section (5) of Section 17 such as telecommunication towers and pipelines laid outside the factory premises. If blocked credit is carried forward and credited to the electronic credit ledger in contravention of Section 140 of the Act, it shall not be utilised by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, and shall be recovered from the tax payer with interest and penalty as per the provisions of the Act.

In cases, where the disputed credit or blocked credit is higher than ₹10 lakhs, the taxpayers shall submit an undertaking to the jurisdictional officer of the Central Government that such credit shall not be utilised or has not been availed as transitional credit, as the case may be.

Comment: TRAN1 being examined through Circular without any due process being followed. Filing undertaking of abstention from using such credits are very new methods being adopted by Revenue.

[Circular No.33/07/2018-GST dated 23rd February, 2018]

2. New features added in Form GSTR 3B and other functionalities made available on the GST Portal

- A) **Filing of Form GSTR 3B:** Filing of Form GSTR 3B has been made easier and user friendly with following features:
- While proceeding to payment you can see details of balances as available in cash and credit ledgers at one place.
 - Tax liabilities as declared in GSTR 3B along with the credits gets updated in the ledgers and reflected in the "Tax payable" column of the payment section and can be seen while hovering on the said headings of credit in the payment section.
 - GST system auto-populates "Tax to be paid through ITC" fields with optimum utilisation amounts based on provisions of the law relating to credit utilisation. It is just suggestive and taxpayer may edit the ITC utilisation. In case ITC utilisation is changed, the cash to be paid also gets changed accordingly.
 - If available cash balance in Electronic cash ledger is not sufficient to offset the liabilities, additional cash required for paying liability is being displayed in the last column of the Table (Additional cash

required). Taxpayers can create Challan for that amount directly by clicking on the Create Challan button. Once you make online payment, system will navigate back to Payments Table. This reduces chances of payment of tax under wrong head.

- Click the Make Payment/Post Credit To Ledger button to pay off the liabilities or to claim credit in case of no liabilities.
- FAQs and User Manual are provided along with pop ups, to guide you while filling Form GSTR 3B, at relevant pages.
- Now, CGST and UGST/SGST need not be filled separately. Filing either of the taxes fills the other tax field automatically.
- Assessee can preview or download Form GSTR 3B to verify saved details in any table(s), anytime by Clicking Preview Draft GSTR-3B button. This button will download the draft Summary page of your GSTR-3B for your review. It is recommended that this Summary page is downloaded and reviewed for the entries made in different sections, before proceeding with the payment of taxes.

- B) **Form ITC 03:** Taxpayers who opt to pay tax under Section 10 or where goods or services both supplied becomes wholly exempt, can declare ITC Reversal/Payment of tax on inputs held in stock or in semi-finished goods or in finished goods and capital goods, in Form GST ITC 03, made available on GST Portal.

- C) **Miscellaneous changes:** Following changes has also been done on GST Portal -
- Before logging onto the GST Portal, taxpayers can search results of last 10 Returns Transaction Status. The Status which will be shown as:
 - For Filed-Valid - Status to be shown as Filed
 - For Valid but Not Filed - Status to be shown as Not Filed
 - A field to enter cess amount paid on exports has been provided in Table 6A of Form GSTR
 - Taxpayers have been provided with facility to give details of supplies made to merchant exporters at rate of 0.1%, in all returns.
 - In GSTR-1 & GSTR-5, on addition of records (Invoices/Dr. Notes/Cr. Notes), an

option has been provided to taxpayer to select a lower tax rate for motor vehicle leasing businesses, as per Notification No. 37/2017-Central Tax (Rate), dated 13-10-2017.

- A field for providing "Reason for Issuing Note" was available in Credit/Debit note

table, in Form GSTR 1, which was to be selected by the Taxpayer, on addition of Credit/Debit note. This dropdown for providing reason, which was a mandatory field, has now been removed from Form GSTR 1.

[GSTN sent this mail to taxpayers]

3. Clarification regarding GST in respect of certain services

The Central Government vide *Circular No.34/08/2018-GST dated 1st March, 2018* has clarified certain issues regarding GST in respect of certain services:

S. No.	Issue	Clarification
1.	Whether activity of bus body building is a supply of goods or services?	Classification of this composite supply as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case. <i>Comment: It does not clarify in case supply falls under HSN 9988. User discretion advised</i>
2.	Whether retreading of tyres is a supply of goods or services?	Retreading of tyres is a composite supply, the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST @ 28%) <i>Comment: Welcome clarification, helps avoid disputes.</i>
3.	Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?	In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity under Section 6(1) of the Banking Regulation Act, 1949 vide Government of India notification dated 4 th February, 2016. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT. In GST, there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods at standard rate of 18% under the residuary S. No. 453 of Schedule III of Notification No. 1/2017-Central Tax(Rate). GST payable on the certificates would be available as ITC to the bank buying the certificates. <i>Comments: Implications are far reaching because 'entitlements' are not 'vested rights'. User discretion advised.</i>
4.	(1) Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST? (2) Whether the guarantee provided by State Government to state owned companies against guarantee commission, is taxable under GST?	(1) Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under Notification No. 12/2017-CT (R), Sl. No. 25. The other services such as, - i. Application fee for releasing connection of electricity; ii. Rental Charges against metering equipment; iii. Testing fee for meters/ transformers, capacitors etc.; iv. Labour charges from customers for shifting of meters or shifting of service lines; v. Charges for duplicate bill; provided by DISCOMS to consumer are taxable. (2) The service provided by Central Government/State Government to any business entity including PSUs by way of guaranteeing the loans taken by them from financial institutions against consideration in any form including Guarantee Commission is taxable. <i>Comment: Sale of power is exempt from GST. But services relating to T&D of power is taxable. Application of this circular requires careful consideration of facts even in case of RWAs or Property Management services involving power charges.</i>

[Circular No.34/08/2018-GST dated 1st March, 2018]

4. Taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter-se between the members of the JV

The Central Government vide *Circular No. 35/9/2018 –GST dated 5th March, 2018* has clarified that levy of GST on services supplied by member of an unincorporated joint venture to joint venture or other members of joint venture or by joint venture to members will be determined as per Circular No. 179/5/2014 of ST dated 29.04.2014 (The circular

clarified that that cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services received from joint venture (JV); and that payments made out of cash calls pooled by a JV towards taxable services received from a member or a third party is in the nature of consideration and hence attracts Service Tax).

Taxability of cash calls has been further explained by the following illustrations:

Legal Update

Illustration A: There are 4 members in the JV including the operating member and each one contributes ₹100 as part of their share. A total amount of ₹400 is collected. The operating member purchases machinery for ₹400 for the JV to be used in oil production.

Illustration B: There are 4 members in the JV including the operating member and each one contributes ₹100 as part of their share. A total amount of ₹400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

4.1 Illustration A will not be the subject matter of 'ST/GST' for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

4.2 On the other hand, in Illustration B, the operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

Comment: Reference to illustrations very important to identify taxable nature of transaction inter se between JV members. However, RWAs in particular cannot enjoy this relief due to express mention in Schedule II.

[Circular No. 35/9/2018 –GST dated 5th March, 2018]

5. Central Goods & Service Tax (Second Amendment) Rules, 2018

The Central Government vide Notification No. 12/2018 dated 7th March, 2018 has notified following rules to further amend the Central Goods and Service Tax Rules, 2017

Particulars	Existing provision	Revised provision
Submission of statement in FORM GST TRAN 2 (FORM for furnishing the details of stock held by registered person availing scheme (60%/40% ITC)	Submits a statement in Form GST TRAN 2 at the end of each of 6 tax periods during which the scheme is in operation.	Submits a statement in Form GST TRAN 2 by 31 st march, 2018 or within such period as extended by the commissioner

Substitution in Rule 138 E-way Rules:

Existing Provision	Revised Provision	Remarks
Sub-rule (1) of Rule 138 provides that every registered person who causes movement of goods furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal.	Submits a statement in Form GST TRAN 2 at the end of each of 6 tax periods during which the scheme is in operation. Sub-rule (1) of Rule 138 provides that every registered person who causes movement of goods furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal.	Now, the registered person is also required to furnish additional information relating to goods as may be required on the common portal and a unique number will be generated on the said portal.
Proviso to sub-rule (3) of Rule 138 provides that where the goods are transported for a distance of less than 10 kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.	Proviso to sub-rule (3) of Rule 138 provides that that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.	Earlier, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01 where the goods are transported for a distance of less than 10 kilometers. Now, the distance limit has been extended upto fifty kilometers within the State.
Proviso to sub-rule (5) of Rule 138 provides that where any transporter transferring goods from one conveyance to another and the goods are transported for a distance of less than 10 kilometers within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill.	Proviso to sub-rule (5) of Rule 138 provides that where any transporter transferring goods from one conveyance to another and the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill.	Earlier in case of transferring goods from one conveyance to another the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01 where the goods are transported for a distance of less than 10 kilometers. Now, the distance limit has been extended upto fifty kilometers within the State.

Existing Provision			Revised Provision			Remarks
Sub-rule (7) of Rule 138 provides that where the consignor or the consignee has not generated Form GST EW-01 in accordance with the provision of sub rule (1) and value of goods carried in the conveyance is more than fifty thousand rupees, the transporter shall generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods.			Sub-rule (7) of Rule 138 provides that where the consignor or the consignee has not generated the e-way bill in FORM GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods.			Through this substitution it has been provided that inspite of identifying value of goods carrying in the conveyance, aggregate of the consignment value of goods carried in the conveyance need to be identified Further, the transporter is no more required to generate E-way bill in case of transportation of goods by railways, air and vessel.
Sub rule (10) of Rule 138 provides that an e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in the table below for the distance the goods have to be transported			Sub rule (10) of Rule 138 provides that an e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in the table below for the distance the goods have to be transported			Through this substitution validity criteria of e-way bill has been amended .
Sl. No	Distance	Validity period	Sl. No	Distance	Validity period	
1.	Upto 100 km.	One day	1.	Upto 100 km.	One day in cases other than Over Dimensional Cargo	
2.	For every 100 km. or part thereof thereafter	One additional day	2.	For every 100 km. or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo	
			3.	Upto 20 km	One day in case of Over Dimensional Cargo	
			4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo	

Insertions in Rule 138:

- Proviso to sub-rule (1) of Rule 138 has been inserted to provide that the transporter, on an authorisation received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal.
- Proviso to sub-rule (1) of Rule 138 has been inserted to provide that where the goods to be transported are supplied through an ecommerce operator or a courier agency, on an authorisation received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal.
- Explanation 2 has been inserted in sub-rule (1) of Rule 138 to provide that for the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of Section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.
- Sub-rule 2A has been inserted to provide that Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B of FORM GST EWB-01.
Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery
- Explanation 2 has been inserted in sub-rule (3) of Rule 138 to provide that the e-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST

EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

- Sub-rule 5A has been inserted to provide that the consignor or the recipient, who has furnished the information in Part A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part B of FORM GST EWB-01 for further movement of the consignment.
- Provided that after the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the consignor or recipient, as the case may be, who has furnished the information in Part A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.
- Proviso to sub-rule (9) of Rule 138 has been inserted to provide that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of Part B of FORM GST EWB-01.
- Further, clauses (e) to (n) have been inserted to provide various situations where no e-way bill is required to be generated for e.g. where goods being transported are non-taxable goods, goods being transported is treated as no supply under Schedule III of the Act etc.

****This Notification will come into effect from a date to be notified in the official gazette***

Comment: Welcome change and ICAI acknowledges active contribution from members in providing these suggestions that have been accepted by Council. Other changes requested are awaited.

[Notification No. 12/2018 dated 7th March, 2018]

6. Late fees for filing of GSTR-5A by OIDAR Service Providers—Notification No. 6/2018 rescinded

The Central Government vide Notification No. 13/2018 – Central Tax dated 7th March, 2018 has rescinded the Notification No. 6/2018-Central Tax dated – 23.01.2018 (This notification had reduced late fees for filing of GSTR 5A by OIDAR service providers to ₹25/day (₹10/day in case of Nil Returns)

[Notification No. 13/2018 – Central Tax dated 7th March, 2018]

7. GST Revenue Collections for month of January 2018 (received in January/February upto 25th February) stand at ₹86,318 crores

1.03 crore taxpayers have been registered under

GST so far till 25th February, 2018. So far 17.65 lakh dealers got registered as composition dealers.

Total Revenue Collection under GST: The last date for filing of GSTR 3B return for the month of January 2018 was 20th February 2018. The total Revenue received under GST for the month of January 2018 (received in January/February up to 25th February, 2018) has been ₹86,318 crores. 1.03 crore taxpayers have been registered under GST so far till 25th February, 2018. So far 17.65 lakh dealers got registered as Composition Dealers. Out of these, 1.23 lakh Composition Dealers have opted-out of the Composition Scheme and have thus become regular taxpayers. Thus, till 25th February, 2018, there are 16.42 lakh Composition Dealers which are required to file returns every Quarter and the rest of 87.03 lakh taxpayers are required to file monthly returns.

57.78 lakh GSTR 3B returns have been filed for the month of January, 2018 till 25th February, 2018. This is 69 percent of total taxpayers which are required to file monthly returns. Amount of tax collected under different heads is shown below:

Revenue Collection under GST

S. no.	Tax	Collection
1.	IGST	₹18,988 crores
2.	CGST	₹25,560 crores
3.	SGST	₹33,440 crores
4.	Compensation Cess	₹8,331 crores

8. GST Council decided to extend tax exemptions for exporters for six months

Sending a strong positive signal to the exporting community, the GST Council in its 26th meeting decided to extend the available tax exemptions on imported goods for a further 6 months beyond 31.03.2018. Thus, exporters presently availing various export promotion schemes can now continue to avail such exemptions on their imports upto 01.10.2018, by which time an e-Wallet scheme is expected to be in place to continue the benefits in future.

In a related development which would benefit the exporters, the Council reviewed the progress in grant of refunds to exports of both IGST and Input Tax Credit. The Council appreciated that the pace of grant of IGST refund has picked up. Thereafter, the Council directed GSTN to expeditiously forward the balance refund claims to the Customs/Central GST/ State GST authorities, as the case may be, for their immediate sanction and disbursal.

It may be recalled that in its meeting held on 06.10.2017 the Council had noted that exporters are experiencing difficulties of cash blockage on account of having to upfront pay GST/IGST on the inputs, raw materials etc./finished goods imported/procured for purposes of exports. An interim solution was found by re-introducing the pre-GST tax exemptions on such imports. Additionally, for merchant exporters a special scheme of payment of GST @ 0.1% on their procured goods was introduced. Also, domestic procurement made under Advance Authorisation, EPCG and EOU schemes were recognised as 'deemed exports' with flexibility for either the suppliers or the exporters being able to claim a refund of GST/IGST paid thereon. All these avenues were made available upto 31.03.2018.

The permanent solution agreed to by the Council was to introduce an e-Wallet scheme w.e.f. 01.04.2018. The e-Wallet scheme is basically the creation of electronic e-Wallets, which would be credited with notional or virtual currency by the DGFT. This notional/virtual currency would be used by the exporters to make the payment of GST/IGST on the goods imported/procured by them so their funds are not blocked.

On 16.12.2017, Finance Secretary constituted a Working Group with representatives of Central and State Governments to operationalise the e-Wallet scheme. After reviewing the progress, the Council noted that whereas some preparatory work had been done, more needs to be done to address a large number of technical, legal and administrative issues that have been identified. The Council appreciated that this would require more time. The Council was also unanimous that there should be no disruption that may affect the exports. Accordingly, the Council agreed to:

- (a) Defer the implementation of the e-Wallet scheme by 6 months i.e., upto 01.10.2018; and
- (b) Extend the present dispensation in terms of exemptions etc. which is available up to 31.03.2018, for a further 6 months i.e., upto 01.10.2018.

Release ID: 177256

9. Recommendations made during the 26th meeting of the GST Council

I. Return filing System

The present system of filing of GSTR 3B and GSTR 1 is extended for another three months i.e., April to June, 2018 till the new return system is finalised. A new model was discussed extensively and Group

of Ministers on IT has been tasked to finalise the same.

II. Reverse charge mechanism

The liability to pay tax on reverse charge basis has been deferred till 30.06.2018. In the meantime, a Group of Ministers will look into the modalities of its implementation to ensure that no inconvenience is caused to the trade and industry.

III. TDS/TCS

The provisions for deduction of tax at source (TDS) under Section 51 of the CGST Act and collection of tax at source (TCS) under Section 52 of the CGST Act shall remain suspended till 30.06.2018. In the meantime, the modalities of linking State and Central Governments accounting system with GSTN will be worked out so that seamless credit is available to the registered traders whose tax is deducted or collected at source.

IV. Grievance Redressal Mechanism

GST implementation Committee (GIC) has been tasked with the work of redressing the grievances caused to the taxpayers arising out of IT glitches.

Release ID: 177255

10. Recommendations regarding Data Analytics made during the 26th meeting of the GST Council

The GST Council has been apprised of the fact that CBEC and GSTN have started detailed data analytics across a number of data sets available with them. The outcome of preliminary data analysis has revealed interesting insights:

- It has emerged that there is variance between the amount of IGST & Compensation Cess paid by importers at Customs ports and input tax credit of the same claimed in GSTR-3B.
- There are major data gaps between self-declared liability in FORM GSTR-1 and FORM GSTR-3B.

It was deliberated that this information may be further analysed and adequate action may be initiated accordingly.

Release ID: 177253

[<http://pib.nic.in/newsite/erelease.aspx>]

11. Facility to provide details of amendment, in Form GSTR 4, has now been provided to composition taxpayers.

Composition taxpayers can now file amendment

details of advance of reverse charge or advances for which invoice is received in current period in various tables of Form GSTR 4, such as Table 5A (for supply), Table 5C (for debit/credit notes), Table 7 (for tax on outward supply made) and Table 8(II).

[GSTN]

CUSTOMS

1. Refund of IGST on Export

The Central Government vide *Circular No.05/2018-Customs dated 23rd February, 2018* has clarified the pre-requisites and precautions that need to be taken for successful processing of refund claims which are as follows:

1. Exporters have to file GSTR 3B with taxable value for export and IGST paid against exports indicated in appropriate fields.
 2. Exporters have to file GSTR 1 or Table 6A for the exports made with correct details such as Invoice number, Taxable value, IGST paid, Shipping Bill number, Shipping Date and Port Code.
 3. The aggregate IGST paid amount claimed in GSTR 1 or Table 6A should not be greater than the IGST paid amount indicated in Table 3.1(b) of GSTR 3B of the corresponding month. This check is put in the GSTN system to ensure that the refund claimed is not more than the IGST paid by the exporter
 4. Exporters may be advised to use Table 9 of GSTR 1 of the following month to amend the records of previous month so as to take care of issues mentioned in paras 2 and 3 above. In cases where exporters have already filed information through Table 9 of GSTR 1, the said information is being validated by GSTN.
 5. Exporters may be advised to track the refund status and errors pertaining to their shipping bills on the ICEGATE website. The registration process demo, advisory and the needed IT configurations are hosted on the ICEGATE website under the following links.
Registration Demo link: https://www.icegate.gov.in/Download/New_Registration_Demo_Updated_APPROVED.pdf
Registration Advisory link: https://www.icegate.gov.in/Download/v1.2_Advisory_Registration_APPROVED.pdf
Java set up for the DSC upload: <https://www.icegate.gov.in/Download/JavaSetupForDSC.pdf>
6. Further, it has been decided to provide an alternative mechanism to give exporters an opportunity to rectify such errors committed in the initial stages. This envisages an officer interface on the Customs EDI System through which a Customs officer can verify the information furnished in GSTN and Customs EDI system and sanction refund in those cases where invoice details provided in GSTR 1/Table 6A are correct though the said details provided in the shipping bill were at variance. It is pertinent to mention that refund claims would be processed only in those cases where the error code is mentioned as SB005. Further, it may also be noted that all refunds shall continue to be credited electronically through the PFMS system, and no manual payment/cheque will be issued. The procedure for processing of IGST refund claims in these cases would be as follows:
 - a) The exporter shall provide a concordance table indicating mapping between GST invoices and corresponding Shipping Bill invoices, as annexed in support of the refund claim to the designated officer in the Custom house. A scanned copy of concordance table may also be sent to dedicated email address of Customs location from where exports took place.
 - b) Customs EDI system shall display list of all the invoices pertaining to such SBs vis-a-vis the invoice data received from GSTN. The officer shall verify the following:
 - i. Duly certified concordance table submitted by the exporter as per Annexure A indicating mapping between GST invoice and corresponding Shipping Bill invoice;
 - ii. IGST taxable value and IGST amount declared in the Shipping Bill.
 - iii. IGST details declared in the Shipping Bill should be in proportion to the goods actually exported.
 - c) After determining the correct refund amount, the officer need to enter the same into the Customs EDI system. The officer has the facility to edit the IGST paid details in case of short shipment or incorrect calculation by the exporter. The officer shall complete the verification by accepting or rejecting or amending the same.
 - d) Once all the invoices pertaining to Shipping Bill are verified by the officer, the

system shall calculate the scroll amount against a shipping bill, after subtracting the drawback amount for each invoice where applicable, and display the refund amount to the officer for approval.

- e) Invoices in any particular GSTR 1 where refund is sanctioned shall be disabled in the system to prevent refund against same invoice in future.
- f) Once refund is sanctioned by the officer, the shipping bills would be available for generating scroll as per normal process.
- g) In order to ensure smooth operation of the prescribed procedure, Custom Houses may open a dedicated cell and e-mail address for the purpose of IGST refund

*This procedure is available only for Shipping Bills filed till 31st December 2017.

[Circular No.05/2018-Customs dated 23rd February, 2018]



(Matter on FEMA has been contributed by CA. Manoj Shah, Mumbai and CA. Hinesh Doshi, Mumbai)

1. Discontinuance of Letters of Undertaking (LOUs) and Letters of

Comfort (LOCs) for Trade Credits

A.P. (DIR Series) Circular No. 20 dated March 13, 2018

On a review of the extant guidelines, it has been decided to discontinue the practice of issuance of LoUs/ LoCs for Trade Credits for imports into India by AD Category-I banks with immediate effect. Letters of Credit and Bank Guarantees for Trade Credits for imports into India may continue to be issued subject to compliance with the provisions contained in Department of Banking Regulation Master Circular No. DBR. No. Dir. BC.11/13.03.00/2015-16 dated July 1, 2015 on "Guarantees and Co-acceptances", as amended from time to time.

2. Gist of some Compounding Orders passed by Reserve Bank of India

Sr. No.	Subject Matter	Contraventions Compounded
1.	Overseas Direct Investment–FEMA Notification No. 120	<ul style="list-style-type: none"> ➤ Indian Company acquired shares of overseas company at time when the overseas company already had FDI in another Indian Company. ➤ This resulted in contravention of provisions of Regulation 6(2)(ii) of FEMA 120 - undertaking Foreign Direct Investment (FDI) under ODI route
2.	Deposit Accounts–FEMA Notification No. 5 and Foreign Direct Investment–FEMA Notification No. 20	<ul style="list-style-type: none"> ➤ Foreign Company opened a NRO account with bank in India. ➤ The Company undertook investments by debit to NRO account without furnishing the necessary undertaking to AD Bank resulting in contravention of Para 1(c) of Schedule 3 of FEMA Notification No. 5. ➤ The Company further contravened Regulation 3 of FEMA 20 by undertaking transactions on stock exchange in India through broker without obtaining specific permission of RBI. ➤ It also contravened provisions of Regulation 5(2) and 5(3) of FEMA 20. FIIs and NRIs can purchase shares or convertible debentures of an Indian Company under Portfolio Investment Scheme. The Company was neither FII nor NRI and therefore was not eligible to undertake the secondary market transactions under the Portfolio Investment Scheme.
3.	Overseas Direct Investment related–FEMA Notification No. 120	<ul style="list-style-type: none"> ➤ Company was engaged in business of import and export of machinery of all kind, spare parts and accessories etc. ➤ The Company made Overseas Direct Investment in an entity which had pre-existing Foreign Direct Investment resulting in contraventions of ODI provisions. ➤ It further contravened provisions relating to non-reporting of setting up of step down subsidiary within stipulated time. Annual Performance Reports were not submitted on time. ➤ All above resulted in contraventions of provisions of regulations 6(2)(ii), 13 and 15(iii) of FEMA Notification No. 120.
4.	External Commercial Borrowings–FEMA Notification No. 3	<ul style="list-style-type: none"> ➤ Company was engaged in business of providing software development services to its overseas group companies. It entered into certain transactions in year 2010 with two of its group companies. ➤ The amounts in relation to transactions remained outstanding beyond stipulated time and finally in 2017 when company paid the same it resulted in External Commercial Borrowings resulting in contravention of Regulation 3 of FEMA Notification No. 3.
5.	Overseas Direct Investment–FEMA Notification No. 120	<ul style="list-style-type: none"> ➤ The company had made overseas investment in Optionally Convertible Redeemable Preference Shares without any equity participation resulting in contravention of ODI provisions.
6.	Foreign Direct Investment–FEMA Notification NO. 20	<ul style="list-style-type: none"> ➤ The Company was engaged in the activity of 'implement and introduce all kinds of saving scheme for the customers' that did not fall under the automatic route for Foreign Direct Investment (FDI) in contravention of Paragraph F.8.1 of Annex B of Schedule I of FEMA Notification No. 20.