

GST GUIDE



Due date for GST Audit 18-19 extended to 30-Sept-20

PMT-09 - Transfer of Electronic Cash Balance from one head to another

GSTR-3B can now be filed with EVC for Companies

Rajasthan HC – GST Dept. cannot raise demand for period prior to take over date after approval of resolution plan

AAR-Rajasthan – Director Remuneration chargeable to GST

Impact of GST due to Covid-19 Outbreak

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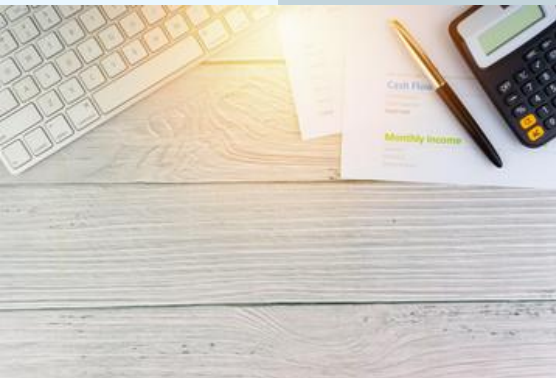
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Notifications, Circulars and Amendments to Law/Rule



Notification	Summary
<p>Notification No.37/2020-CT dated 28-Apr-20</p>	<p>A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for IGST,CGST,SGST, UTGST and Cess in FORM GST PMT-09.</p> <p>➤ <u>RAMA Says:-</u> Major relief to the taxpayers having unused balances in wrong GST heads. Although, option was available to file refund application for excess balance, but it is a lengthy procedure to claim the refund. Now the taxpayer can easily transfer their excess balance in any of the ledger heads in short span of time.</p>
<p>Notification No. 38/2020-CT dated 05-May-20</p>	<p>Companies registered under Companies Act 2013 shall have an option to verify GSTR3B filed during the period 21-Apr-20 to 30-Jun-20 through Electronic Verification Code (EVC)</p>
<p>Notification No. 39/2020-CT dated 05-May-20</p>	<p>Following are the amendments for special procedure for Corporate Debtors covered under IBC:-</p> <ul style="list-style-type: none"> - The special procedure shall not apply to those corporate debtors, having GSTR1 and GSTR3B, already filed for all the tax periods prior to the appointment of Interim Resolution Professional (IRP) or Resolution Professional (RP) - As per the special procedure, Corporate Debtors need to obtain new GST Registration in all the existing states / Union Territories within 30 days from the date of appointment of IRP/RP or 30-Jun-20 whichever is later.

Notifications, Circulars and Amendments to Law/Rule



Notification	Summary
Notification No.40/2020-CT dated 05-May-20	The validity period of E-way bills having expiry between 20-Mar-20 to 15-Apr-20 shall deemed to be extended to 31-May-20 provided that e-way bill should have been generated on or before 24-Mar-20.
Notification No.41/2020-CT dated 05-May-20	Due date for filing GST Annual Return (Form 9) and Reconciliation Statement (Form 9C) has been further extended till 30-Sept-20.
Notification No.43/2020-CT dated 16-May-20	<p>It notifies section 128 of Finance Act,2020 w.e.f 18-May-20.</p> <p>The said section of Finance Act deals with the amendment in section 140 of the CGST Act (Transitional arrangements for Input Tax Credit) which shall come into action retrospectively from 01-Jul-17.</p> <p>➤ <u>RAMA Says:</u> <i>It will be a major relief for the petitioner whose legitimate ITC of pre-GST Regime have not been transferred to GST Regime. The amendment will probably cause trouble for almost everyone except the petitioner of that ruling for claiming all transitional credit which was pending and the last date to claim it was June 30</i></p>

Notifications, Circulars and Amendments to Law/Rule

Circular No. 136/06/2020-GST

Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread of Novel Corona Virus (COVID-19).

Government has issued [Notification No. 30/2020 to 35/2020- CT, dated 03-Apr-20](#) in order to provide relief to the taxpayers. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board has clarified certain issues which are as follows:-

Sr. No.	Issue	Clarification								
1.	Whether due date of furnishing FORM GSTR-3B for the period Feb to Apr-20 have been extended?	<div><div><div>1. The due dates for furnishing FORM GSTR-3B for the period Feb to Apr-20 have not been extended.</div><div>2. However there will be lower rate of interest for delays in filing GSTR3B which are as follows:-</div></div><table><tr><th>Turnover Limit</th><th>Interest Rate</th></tr><tr><td>Upto Rs.5 Cr.</td><td>Nil, if filed by the date specified in the notification</td></tr><tr><td>Above Rs.5 Cr.</td><td>Nil, for first 15 days</td></tr><tr><td></td><td>9% thereafter if filed by the date specified in the notification</td></tr></table><div>3. Further, Government has waived the late fees for delay in filing GSTR3B for the period Feb to Apr-20.</div></div>	Turnover Limit	Interest Rate	Upto Rs.5 Cr.	Nil, if filed by the date specified in the notification	Above Rs.5 Cr.	Nil, for first 15 days		9% thereafter if filed by the date specified in the notification
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2.	What are the conditions attached for availing reduced rate of interest for the period Feb to Apr-20 for Registered Person whose Aggregate Turnover in preceding financial year is above Rs.5 crores?	<div><div>1. The reduced rate of interest is subject to the condition that the registered person must furnish GSTR3B for the said period on or before 24-Jun-20.</div><div>2. In case if GSTR3B for the said period is filed after 24-Jun-20, interest @ 18% per annum shall be payable from the due date of return till the date on which return is filed.</div></div>								

Notifications, Circulars and Amendments to Law/Rule

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2.		<div>3. Calculation of interest is explained in the following example: -</div> <table><tr><th>#</th><th>Date of Filing GSTR3B</th><th>Delays (in no. of days)</th><th>Interest Rate</th></tr><tr><td>1</td><td>02-May-20</td><td>11</td><td>0%</td></tr><tr><td>2</td><td>20-May-20</td><td>30</td><td>0% for 15 days + 9% p.a. for 15 days</td></tr><tr><td>3</td><td>20-Jun-20</td><td>61</td><td>0% for 15 days + 9% p.a. for 46 days</td></tr><tr><td>4</td><td>24-Jun-20</td><td>65</td><td>0% for 15 days + 9% p.a. for 50 days</td></tr><tr><td>5</td><td>30-Jun-20</td><td>71</td><td>18% p.a. for 71 days (no benefit of reduced interest)</td></tr></table>	#	Date of Filing GSTR3B	Delays (in no. of days)	Interest Rate	1	02-May-20	11	0%	2	20-May-20	30	0% for 15 days + 9% p.a. for 15 days	3	20-Jun-20	61	0% for 15 days + 9% p.a. for 46 days	4	24-Jun-20	65	0% for 15 days + 9% p.a. for 50 days	5	30-Jun-20	71	18% p.a. for 71 days (no benefit of reduced interest)
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3.	Whether due date of statement of outward supplies (FORM GSTR-1) under section 37 has been extended for the months of February, March and April 2020?	<div>1. Late fees leviable under section 47 has been waived for delay in filing GSTR-1 under Section 37, for the tax periods Mar-20 to May-20 and quarter ending Mar-20, if the same are furnished on or before 30-Jun-20.</div>																								
4.	Whether restriction under rule 36(4) of the CGST Rules would apply during the lockdown period?	<div>1. A proviso has been inserted in CGST Rules 2017 to provide that the said condition shall not apply to input tax credit availed by the registered persons in FORM GSTR-3B for the period Feb-20 to Aug-20, but that the said condition shall apply cumulatively for the said period and that FORM GSTR-3B for the Sept-20 shall be furnished with cumulative adjustment of input tax credit in accordance with the condition under rule 36(4).</div>																								

Notifications, Circulars and Amendments to Law/Rule

Sr. No.	Issue	Clarification
6.	What are the measures that have been specifically taken for taxpayers who are required to deduct TDS under section 51, ISD and Non-resident Taxable Person, collect Tax at Source under section 52?	As per the terms of notification no. 35/2020- CT, the said class of taxpayers have been allowed to furnish their returns- GSTR-5 (Return for non- resident),GSTR-7 (TDS) and GSTR-8 (TCS) for the period Mar-20 to May-20, by 30-Jun-20.
7.	Time limit for compliance of some provisions of the Act is falling during the lock-down period. What should the taxpayer do?	Except for few provisions covered in exclusion clause, any time limit for completion or compliance of any action which falls during the period from 20-Mar-20 to 29-Jun-20, and where completion or compliance of such action has not been made within such time, has been extended to 30-Jun-20

Case Laws



Case Law: GST Department has no jurisdiction to raise demands for the period prior to take over date after the resolution plan was finalized & approved.

Ultra Tech Nathdwara Cement Ltd Vs. Union of India (HC RJ)

Crux of the case : Binani Cement Company suffered huge losses and was unable to pay the debts to the Financial Creditor i.e. Bank of Baroda, which preferred an insolvency application. As per the due process of law, the Committee of creditors agreed to resolution plan provided by the Petitioner Ultra Tech. Along with admitting the outstanding of various operational creditors, the plan also admitted to pay Rs. 72.85 Crores as the total dues which were owed to Central Tax and service Tax department. As per the approved plan of resolution, the admitted debts were paid in full by ultra Tech.

Despite the resolution plan having attained finality and having being executed, the respondents (GST Department) herein had raised numerous demands from petitioner for the period Apr-12 to Jun-17 and interest upto

25-Jul-17. Having made the full and final payment as proposed by the resolution professional, the petitioner addressed a letter to the respondents informing them of the payment of dues as admitted by the CIRP and reminded them that all remaining claims and proceedings stood extinguished in terms of the resolution plan. Having failed to get any positive response from the respondents, the petitioner company has approached this Court through this writ petition under Article 226 of the Constitution of India seeking the relief.

Contentions of the parties: The Petitioner relied on the amended provisions of Section 31(1) of the IBC Act and argued that in light of the specific amendment to the Act, the Department cannot recover any further amount from the Resolution Applicant over and above what has been stated in the approved resolution plan. In other words, the resolution plan was binding on all creditors including the Department. When the amendment made with regards to the provisions of IBC was made Hon'ble Finance Minister had clearly stated that provisions of the IBC were binding on the

Case Laws



Government and the Government could not make any further claim, other than what was stated in the resolution plan.

The Department mainly argued that they were never heard by the COC before the resolution plan was finalized and hence, the resolution plan was not binding on the Department.

Decision by High Court: The Hon'ble Court also clearly held that the financial creditors have to be given a precedence in the ratio of payments when the resolution plan is being finalized. It is the financial creditors who are given right to vote in the COC whereas, the operational creditors viz. Commercial Taxes Department of the Central Government or the State Government as the case may be, have no right of audience. The purpose of the statute is very clear that it intends to revive the dying industry by providing an opportunity to a resolution applicant to take over the same and begin the operation on a clean slate. The Hon'ble High Court decided the matter in favour of the assessee and held that the object of the IBC is salutary and held that once the offer of the resolution applicant was accepted, the same is binding on all parties.

Hence, no demand over and above the demand accepted in the resolution plan was held to be payable by the resolution applicant-petitioner.

➤ **RAMA Says:-** The purpose of IBC code is to ensure that the companies under severe distress can be brought back to its normal life with the help of Resolution Plan. The department cannot create a hindrance by demanding some previous / prior payments time and again when the same has been settled and the company is successfully resolved. It is hoped that after such a clear proposition has been established, the resolution applicants who revive struggling companies are not saddled with further litigation by the tax authorities.

Advance Authority Rulings (GST)

GST Payable on Directors Remuneration (Clay Craft India Pvt Ltd. -AAR Rajasthan)

Issues Raised:

Whether GST is payable under Reverse Charge Mechanism (RCM) the salary paid to Director of the company who is paid salary as per contract

Whether the situation would change if the Director also is a part time Director in other company

Discussion:

Key Points By company:

The company said its directors are working as employees for which they are being compensated by way of a regular salary and other allowances.

- The company is deducting TDS on their salary and PF laws are also applicable to their service.
- Directors are the employees of the company and are working as such besides being Director of the company.

Remarks by Authority for Advance Ruling

- The consideration paid to the directors by the applicant company **will attract GST under reverse charge mechanism.**
- Director is the supplier of services and the applicant of the company is the recipient of the services.



Conclusion:

The consideration paid to the Directors by the applicant company will attract GST under reverse charge mechanism as it is covered under entry No. 6 of **Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017** issued under Section 9(3) of the **CGST Act, 2017**.

Similar ruling was held by Karnataka bench for AAR of **M/s. Alcon Consulting Engineers (India) Pvt.**

➤ **RAMA Says:** These rulings bring a big dilemma for the organizations. Ideally most of the directors in the organization work in the capacity of employee and there is an employer-employee relationship. Due to this, such services received by the company are covered under Schedule III Clause 1. In cases where Directors are not in capacity of employee, the GST is being discharged on Reverse Charge Basis. But such an Advance ruling brings a question of law in itself and hence requires further clarification.

RAMA IRIS GST / Portal Updates

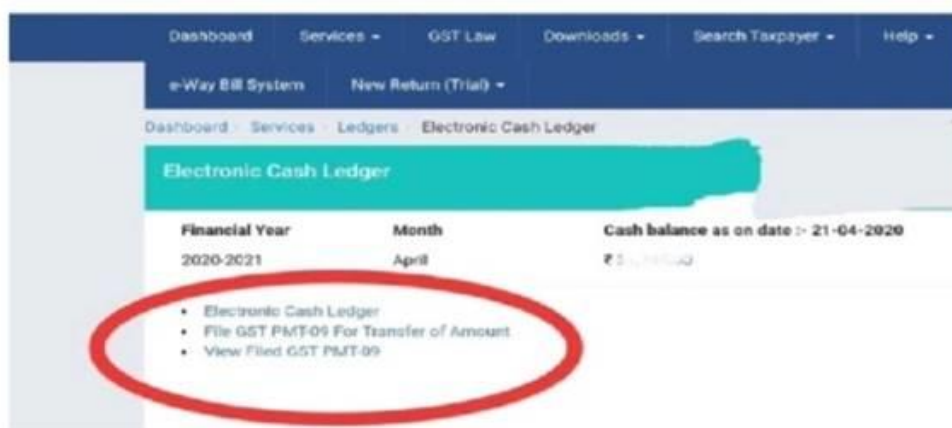
CBIC has updated GST Portal with 2 Important Features as follows-

1. PMT-09 is live now using which taxpayer can transfer any amount of tax, cess, interest, penalty, etc. that is available in the electronic cash ledger, to the appropriate tax or cess head.

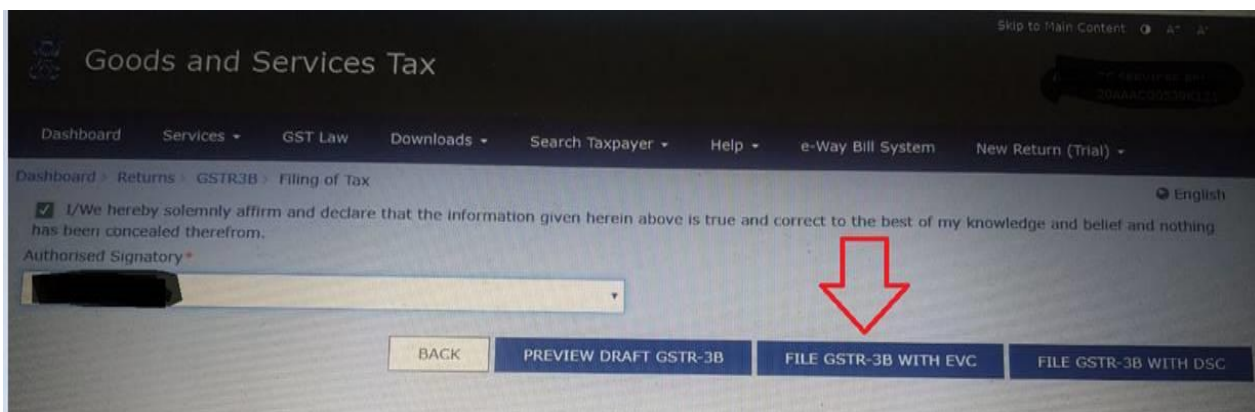
Latest Updates on PMT-09 facility

As on 21 April 2020

PMT-09 is LIVE on the GST portal.



2. The option to file GSTR-3B by EVC (Electronic Verification Code) instead of DSC is made available on GSTIN portal. Tax payers can submit GSTR-3B without DSC.



Impact of GST due to Covid-19 Outbreak

Overview

The outbreak of Coronavirus has caused a significant impact on day to day living of the common man, government coffers and business operations. Though lockdown remains the only way to slow the spread, it will also continue to push economic operations to the brink.

The coronavirus will have a significant impact on various provisions under GST law such as GST return compliance, eligibility of input tax credit, the charge of tax on outward supplies, e-way bill and goods sent for Job work.

In this article, we have outlined the GST impact due to the Coronavirus pandemic so that the taxpayers can make informed decisions and be aware of the compliance requirements.

Impact on Outward Supplies

1. Interest / penalty charged for delayed payment by customers.

In case the invoice or the agreement stipulates that the overdue fine shall be applicable for delay in payment by the customer, GST shall be applicable on such overdue fine.

GST to be remitted at the time of receipt of such fine/interest/penalty as per provisions of section 15 of CGST Act, 2017.

2. Post-sale Discounts provided to customers

In the wake of coronavirus outbreak, post-sale discount may be provided to customer due to various reasons such as non-availability of funds,



decrease in the market value of goods, etc. such discounts shall not be allowed as a deduction under GST law, unless:

- i. such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- ii. input tax credit as is attributable to the discount based on a document issued by the supplier has been reversed by the recipient of the supply

3. Subsidy provided by Government

GST shall not be applicable to any subsidy provided by the Government. In case the subsidy is provided by any other association or industrial body GST may be applicable on the same.

4. Non – Export of Goods

In case of Export under Bond or Letter of Undertaking (LUT), the exporter is liable to pay tax along with interest if goods are not exported outside India within 3 months of issuing the export invoice.

Impact of GST due to Covid-19 Outbreak

The delay may be caused due to various restrictions by customs, non-availability of logistics and non-acceptance of goods by customers.

Note: Refund can be claimed post export of goods

5. Consideration for Export of Services

Due to current lockdown in almost all part of the world, it will be difficult to receive convertible foreign exchange within one year of providing Export services.

As per rule 96A, if the payment of Export services is not received by the exporter in convertible foreign exchange within 15 days after expiry of one year of providing services, he will require to pay the tax along with interest under section 50.

6. Goods or Services provided free of cost to NGO/ Trust to provide benefit to poor / needy people in Covid-19 Situation

As per section 16(1), Every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of business. Since the goods or services are provided to NGOs or trusts for donation and as per GST law, the inputs were not used for furtherance of business, the department may take a view for the reversal of ITC.

7. Support services provided by Group Companies

Any support services provided by Group Companies/ head office to branch offices by way of setting up of IT infrastructure and capabilities to work from home to employees shall have GST impact.

In certain cases, the said services may be provided by the group companies free of cost. In such cases, the activities shall fall under Schedule I of CGST Act, 2017 and may still be continue to be taxable.

Impact on Inward Supplies

1. Denial of credit on slow moving and non-moving stock disposed

As per section 17(5) (h), Input Tax credit wrt to disposal or write of stock is required to be reversed. There may be cases where the perishable products or slow moving products may need to be disposed off due to lockdown which may result into reversal of ITC.

2. Input tax credit on employee related expenses

The overall impact and admissibility of input tax credit on employee related expenses needs to be carefully examined. Some of the points which require consideration are given below:

- Eligibility of input tax credit on medical insurance taken for employees
- Eligibility of input tax credit on reimbursement of expenses related to internet, telephone facility
- Eligibility of input tax credit on expense incurred on providing food and shelter to migrant workers stuck at factory
- Eligibility of input tax credit on expenses incurred for sanitizers, masks etc. for the employees.

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