

## July 2024

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## Income Tax

- + **Specified forms mandated to be furnished electronically:** The CBDT has mandated that following forms with effect from 27th June 2024 shall be furnished electronically.

Sr.	Form	Description
1	3CN	Application for notification of affordable housing project as specified business under section 35AD of the Income-tax Act
2	3CS	Application for notification of a semiconductor wafer fabrication manufacturing unit as specified business under section 35AD of the Income tax-act
3	3CEC	Application for a pre-filing meeting by taxpayers willing to enter into an advance pricing agreement
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6	59A	Application for approval of issue of units by a mutual fund under section 80C(2)(xx) of the Income-tax Act

Notification No. 01/2024-25 dated 24.06.2024

- + **Condonation of delay in payment under DTVsV Act, 2020:** The CBDT introduced the Vivad Se Vishwas Scheme, 2020 with a view to reduce pending income-tax litigations. As per the scheme, taxpayers could settle disputes by paying the disputed taxes on or before 31st October 2021, and the associated interest and penalties would be waived off. The revenue received representations for accepting the delay in payment of taxes. Considering these representations, the CBDT has directed that delay in payment of taxes specified in Form 3 of Direct Taxes Vivad Se Vishwas Rules, 2020 shall be accepted provided the following conditions are fulfilled.
- The assessee has made full payment of taxes on or before 28.02.2022;
  - The appeal mentioned Form-I of the DTVsV Rules has either been withdrawn or has not been decided as on date of full payment of taxes.

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The concerned Principal Commissioner of Income Tax (PCIT) may manually issue a modified Form-3 if necessary, allowing the taxpayer to file Form-4 manually. The PCIT will thereafter manually issue Form-5 after examining the conditions as per the scheme. The entire process is required to be completed by September 30, 2024.

*CBDT Order F.No.173/03/2021-IT A-I(Pt.2) 01/2 dated 27.06.2024*

### Goods and Services Tax (GST)

- + **Circulars issued on 26.06.2024:** The CBIC has issued certain important clarifications vide Circular No. 207/01/2024-GST to 222/16/2024-GST dated 26.06.2024. A detailed analysis of these circulars is provided in 'Special Communique\_GST Circulars dated 26.06.2024' Annexure enclosed to this Communique.

### Customs

- + **Launch of Exchange Rate Automation Module (ERAM):** As part of a Digital India initiative, CBIC has decided to automate the process of updating details of currency exchange rates into ICEGATE system, where present method is to manually update the details of exchange currency rates. In this backdrop, it is decided to integrate the system of SBI with ICEGATE to transmit the necessary currency exchange rate details from SBI system to ICEGATE system. As regular practice the board will continue to notify exchange rates on 1<sup>st</sup> and 3<sup>rd</sup> Thursdays of the month and the rates will become effective from midnight of the following day, starting effective 11.07.2024. Further, in case of fluctuation in currency rates by more than 5%, (+/-) the rate of currencies will be re-notified with effect from the following day.

The details of exchange rate shall be accessible by public at url: <https://www.icegate.gov.in>. Detailed mechanism in this regard is provided in link below:

*Circular No. 07/2024-Customs dated 25.06.2024*

- + **Clarification on transfer of goods from one warehouse to another in MOOWR:** Based on representation from Trade Bodies, the Board has clarified, that transfer of goods from one unit to another unit/ warehouse (as per Section 65 of Customs Act, 1962), for use or further processing within the supply chain is permitted subject to strict adherence to following conditions outlined under the Manufacturing and Other Operations in Warehouse Regulations (MOOWR), 2019 and warehousing provisions as prescribed under Chapter IX of Customer Act, 1962:

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- Licensee to verify intactness of the one-time lock;
- Reconciliation of quantity of goods received, with the appended forms (as required by Regulation 11 of MOOWR). The Form to be endorsed by the licensee or warehouse keeper of both the dispatching warehouse and the receiving warehouse;
- Details of resultant goods, the corresponding warehoused goods (i.e., warehoused goods contained in the resultant goods), to be captured in the said Form before initiating dispatch of goods;
- Intimation for transfer of goods to the Bond Officer (as mandated by Regulation 13 of MOOWR).
- Complying with the procedure to duly debit the triple duty bond of the Transferee as specified in Annexure C of Circular No. 34/2019-Customs, and re-crediting the triple duty bond of the supplier in accordance with Section 59 of the Customs Act, 1962;
- Ensuring transit risk insurance policy is mandatorily obtained to cover Customs Duty involved in goods so transferred from one warehouse to another;
- Intimation to proper officer regarding transfer of goods from one warehouse to another should be submitted. Please note prior permission is not required, mere intimation would suffice.
- To comply with maintenance of digital records and accurate and timely filing of monthly returns to ensure details of duty-free goods along with information about duties involved is captured and duty gets paid at the time of removal of goods for home consumption.

*Instruction No. 16/2024-Customs dated 25.06.2024*

## Foreign Trade Policy (FTP)

- + **Amendment to Import Policy of exempted inputs from mandatory Quality Control Orders:** DGFT has amended the import policy by including chemical products to the list of goods exempted from applicability of mandatory Quality Control Orders (QCOs). Hitherto such exemption was applicable only to textile products. Further, exemption will now be extended, only when such goods i.e., textile/chemical products are notified by Ministry of Textiles and Department of Chemicals and petrochemicals (DCPC). Lastly, period of Export Obligation for such inputs imported by AA holder or 100% EOUs or SEZs will continue to be 180 days from the date of clearance of import consignment, where such import of inputs is/are covered by above referred mandatory Quality Control Orders (QCOs) exemption. *Notification no. 16/2024-25 dated 06.06.2024 and Addendum to notification 16/2024-25 dated 12.06.2024*

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- + **Relaxation from submission of Bill of export for export to SEZ by AA holders:** The DGFT has, in the interest of exporters (AA holders) facing hardship to comply with requirement to discharge of export obligation, specifically with respect to submission of Bill of Export for exports made to SEZ unit/developer/co-developer for exports made upto 30.06.2017, has decided to relax the requirements of submission of Bill of Export. However, in lieu of Bill of Export following documents will have to be submitted as alternative evidences:
  - ARE-1 (Application for removal of excisable goods attested by jurisdictional Central Excise/GST authorities of AA holder/DFIA (Duty free import authorization) exporter;
  - Evidence of receipt of supplies by recipient in SEZ;
  - Evidence of payment made by SEZ unit from the foreign currency account maintained by SEZ unit, while payment to SEZ developer/co-developer can be made by SEZ unit in INR (**Ref: Para 4.21 of FTP 2023**).

Policy circular no. 04/2024 dated 03.06.2024

## FEMA

- + **Clarifications on Overseas Portfolio Investment (OPI) and Expanded Eligibility for Indian Entities:** The Foreign Exchange Management (Overseas Investment) Directions provided that investments in units (including sponsor contribution) of any investment fund overseas regulated by a regulator of financial sector in such country or jurisdiction would be treated as OPI. Considering the variety of instruments that may be issued by such investment funds or vehicles, the RBI has now amended the provision by expanding the investments to include investments in *any other instrument* that may be issued by an investment fund to be treated as OPI.

Further, one of the conditions associated is that the investment fund or vehicle has to be regulated by the financial sector regulator of the host country or jurisdiction. This provision has also been extended to include those investment funds whose activities are regulated by the financial sector regulator of the host jurisdiction through a fund manager.

RBI notification RBI/2024-25/41 dated 07.06.2024

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## Summary of the circulars issued on 26.06.2024

Circular	Subject	Relevant to	Page No
<a href="#">207/01/2024-GST</a>	Monetary limits for departmental appeals	<i>Tax Office + Tax Payers</i>	4
<a href="#">209/03/2024-GST</a>	Place of supply for goods supplied through e-commerce operator to an unregistered person	<i>Taxpayers making supplies through an e-commerce operator to an unregistered person</i>	6
<a href="#">210/04/2024-GST</a>	Valuation of imported services by related persons in specified cases	<i>All such taxpayers, who imports services from related persons</i>	7
<a href="#">211/05/2024-GST</a>	Time limit for availment of ITC for RCM supplies received from unregistered suppliers	<i>All taxpayers</i>	8
<a href="#">212/06/2024-GST</a>	Mechanism for proof of reversal of ITC by recipient w.r.t. post-sale discounts	<i>All taxpayers</i>	9
<a href="#">213/07/2024-GST</a>	Taxability of ESOP/ ESPP / RSUs provided Foreign Holding company to employees of its Indian Subsidiary	<i>Indian subsidiary Company with Holding Company outside India</i>	10
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<a href="#">215/09/2024-GST</a>	Taxability of salvage/wreckage value earmarked in the claim assessment of damage to motor vehicles	<i>General Insurance Companies</i>	13
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## Summary of the circulars issued on 26.06.2024

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<a href="#">217/11/2024-GST</a>	ITC on expenses incurred for repair of motor vehicles by Insurance Companies	<i>Insurance Company + Automobile Industry and others</i>	17
<a href="#">218/12/2024-GST</a>	Taxability on Loan given by an Overseas affiliate to an Indian affiliate or between related person	<i>All such taxpayers, specifically services rendered between related persons</i>	19
<a href="#">219/13/2024-GST</a>	ITC on ducts and manholes used in Network of Optical Cables (OFCs)	<i>Telecommunication Sector</i>	20
<a href="#">220/14/2024-GST</a>	Place of Supply for Custodial Services provided by banks to Foreign Portfolio Investors	<i>Banks / Financial institutions</i>	21
<a href="#">221/15/2024-GST</a>	Time of supply for construction and maintenance services in NHAI's Hybrid Annuity Mode (HAM) Model	<i>Concessionaires who construct and maintain roads of NHAI</i>	22
<a href="#">222/16/2024-GST</a>	Time of supply for telecom spectrum allotment	<i>Taxpayers registered as telecom service providers</i>	23

## Monetary Limits for departmental appeals - (Circular No. 207/01/2024 -GST)

Issues/ Particulars	Clarifications
<p><b>Monetary limit for filing appeals by the department</b></p>	<ul style="list-style-type: none"> <li>• The National Litigation Policy (NLP) aims to optimize judicial resource utilization and expedite case resolutions by setting thresholds for filing appeals in revenue matters.</li> <li>• The Central Board of Indirect Taxes &amp; Customs (CBIC), upon recommendation of GST Council, has fixed monetary limits for filing appeals by tax authorities. The minimum value prescribed for tax authorities to prefer an appeal or application or Special Leave Petition at different forums is as mentioned below: <ul style="list-style-type: none"> <li>✓ <b>GSTAT:</b> INR 20,00,000</li> <li>✓ <b>High Court:</b> INR 1,00,00,000</li> <li>✓ <b>Supreme Court:</b> INR 2,00,00,000</li> </ul> </li> </ul> <p><b><u>Exclusions:</u></b></p> <ul style="list-style-type: none"> <li>• These limits exclude cases involving: (a) provisions of CGST/SGST or UTGST Act, 2017 which are held as ultra vires to the Constitution; (b) CGST/SGST Rules; or any notification, instruction, circular issued which are held as ultra vires to CGST/SGST or UTGST Act, 2017 (c) valuation of goods or services or both; or classification of goods or services or both; or refunds; or place of supply; or any other issue which are of recurring nature and /or involves interpretation of Act/Rules/Notification./Circular/Order/Instructions etc.,</li> <li>• Further, appeals by Government can be filed irrespective of threshold limit, in matters that involve passing of strictures, adverse comments against the Government / Department or their officers and cases where it is believed that contesting is necessary to protect interest of revenue.</li> </ul>

## Monetary Limits for departmental appeals - (Circular No. 207/01/2024 -GST)

Issues/ Particulars	Clarifications
<b>Monetary limit for filing appeals by the department</b>	<p><b><u>Threshold computation, where dispute pertains to:</u></b></p> <ul style="list-style-type: none"><li>✓ <b>Tax:</b> Aggregate of all taxes (CGST, SGST or UTGST, IGST and GST Compensation Cess) only should be considered (not to include interest and penalty);</li><li>✓ <b>Interest:</b> Amount of interest shall be considered;</li><li>✓ <b>Penalty:</b> Amount of penalty shall be considered;</li><li>✓ <b>Late Fee:</b> Amount of late fee shall be considered;</li><li>✓ <b>Interest and Penalty and or Late Fee:</b> Aggregate amount of interest, penalty and late fee shall be considered;</li><li>✓ <b>Erroneous Refunds issued:</b> Amount of refund in dispute (CGST, SGST/UTGST, IGST and GST Compensation Cess), shall be considered;</li></ul> <p><b><u>Note:</u></b> <i>Whereby way of composite order, more than one demand notice/appeal is disposed, then in such cases total amount of tax/interest/penalty/late fee as the case may be shall be considered to compute the threshold prescribed in this circular.</i></p> <p>Additionally, appeals should be filed by department based on the merits of each case and not merely on the monetary value involved. Further, non-filing of appeals on account of threshold limits does not imply acceptance of the decision by the department and appeal can be preferred when threshold is breached for any other period involving same issues;</p> <p>It is further mentioned that departmental representatives must make necessary efforts to intimate GSTAT or Court, as the case may be, about the reason for not preferring an appeal i.e., on account of threshold limit to ensure no inference is drawn that such decision is accepted by department.</p>

## Place of supply of goods to unregistered persons - (Circular No. 209/03/2024 -GST)

Issues/ Particulars	Clarifications
<p><b>Place of supply of goods (particularly being supplied through e-commerce platform) to unregistered persons, where billing address is different from the address of delivery of goods</b></p>	<p><b><u>General Principle to determine Place of Supply, where goods are supplied through an e-commerce operator to an unregistered person:</u></b></p> <ul style="list-style-type: none"><li>• Where the supply of goods is made to an unregistered person through an e-commerce operator, the place of supply would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice.</li><li>• Recording of the name of the State of the unregistered person on invoice shall be deemed to be the address of the said person.</li></ul> <p><b><u>Place of Supply, where billing and delivery address are different:</u></b></p> <ul style="list-style-type: none"><li>• Where the billing address and delivery address of the unregistered person buying goods through an e-commerce operator are different, <u>then address of delivery recorded on the invoice</u> will be the place of Supply of such goods supplied through an e-commerce operator.</li></ul> <p><b><u>Illustration:</u></b> If Mr. A (unregistered) from State X orders a mobile phone through an e-commerce platform to be delivered to State Y, and the invoice lists State X as the billing address, the place of supply in the instant case will be State Y i.e., delivery address.</p>

## Valuation of import of services by a related person - (Circular No. 210/04/2024 -GST)

Issues/ Particulars	Clarifications
<b>Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit</b>	<p><b>Rule 28 of CGST/SGST Rules, 2017:</b></p> <ul style="list-style-type: none"><li>• The value of supply between related persons or distinct persons, if the recipient is eligible for full input tax credit (ITC), is deemed to be the invoice value.</li></ul> <p><b>Circular No. 199/11/2023-GST:</b></p> <ul style="list-style-type: none"><li>• Clarified the treatment of services between distinct persons, such as Head Office (HO) and Branch Office (BO).</li><li>• If HO provides services to BO and BO is eligible for full ITC, the declared invoice value is the open market value.</li><li>• If no invoice is issued, the value of services is deemed to be Nil.</li></ul> <p><b><u>Applicability of deemed NIL valuation to import of Services from related persons:</u></b></p> <ul style="list-style-type: none"><li>• Import of services from a related foreign entity (including foreign affiliate) is taxable in the hands of recipient entity under reverse charge mechanism.</li><li>• If the recipient (domestic) entity is eligible to full ITC, the value the value of such supply of services declared in the self invoice issued under Section 31(3)(f) of CGST Act by the related domestic entity may be deemed as open market value.</li><li>• Where recipient is eligible for full input tax credit (meaning, does not have any kind of exempt supplies to attract provisions of Rule 42/43 of CGST/SGST Rules, 2017), and self invoice is not issued by the related domestic entity, value of such services can be deemed to be NIL. By this clarification it is confirmed that benefit of Circular No. 199/11/2023-GST is equally applicable to import of services from related persons.</li></ul>

# Time limit for availment of ITC for RCM supplies received from unregistered suppliers -

(Circular No. 211/5/2024 -GST)

Issues/ Particulars	Clarifications
<b>Relevant financial year for computation of time-limit for availment of ITC on RCM supplies received from unregistered suppliers</b>	<ul style="list-style-type: none"><li>• The relevant financial year for calculation of time limit for availment of ITC on RCM supplies received from unregistered supplier will be the <b>financial year in which the self-invoice is issued by the recipient</b> in terms of Section 31(3)(f) of the CGST Act, 2017.</li><li>• Therefore, <b>irrespective of the year in which the supply was received</b>, ITC in such cases can be availed by the recipient based on the self-invoice raised by the recipient till November of the following financial year, upon payment of tax. For e.g.: Towards import of services received in FY 2019-20, if RCM is paid July 2024 &amp; self-invoice is raised in July 24, the recipient can avail ITC till November 2025. It is recommended that the ITC should be claimed not later than October of the following financial year.</li><li>• Delay in issuance of self-invoice and payment of taxes under RCM by the recipient will result in:</li><li>• <b>Interest liability</b> for the delay in payment of tax.</li><li>• <b>Penalty extendable to Rs. 50,000/-</b> for failure to issue invoice in accordance with the relevant provisions.</li></ul>

## SDU Comments:

- Taxpayers may get a relief from the levy of interest and penalty for the periods from July 2017 to March 2020, if eligible, once the Amnesty Scheme recommended in the 53<sup>rd</sup> GST Council Meet is notified.
- With regard to RCM supplies received from Registered Suppliers, the position is unchanged i.e. the relevant financial year for availment of ITC will be the financial year in which the invoice / debit note is issued by the Registered Supplier.

## Mechanism for proof of reversal by recipient w.r.t. post-sale discounts - (Circular No. 212/06/2024 -GST)

**Background:** Value of post-supply discounts offered by a supplier to a recipient, by issuance of a tax credit note can be reduced from the taxable value only if ITC attributable to such discount is reversed by the recipient (Conditions as per Section 15(3)(b)(ii) of the CGST Act, 2017).

Issues/ Particulars	Clarifications
<b>GST portal lacks functionality to allow suppliers / tax officers to verify if the recipient has complied with the condition for reversal of ITC attributable to the said discounts.</b>	<p>Until the functionality to verify the same is made available on the portal, the following mechanism is prescribed:</p> <p><b>For tax amounts (CGST + SGST+ IGST+ Compensation Cess) w.r.t. discounts exceeding Rs. 5,00,000/-:</b></p> <ul style="list-style-type: none"><li>• Suppliers to <b>obtain a Certificate issued by Chartered Accountant (CA) or Cost Accountant (CMA)</b> from the recipient.</li><li>• The CA / CMA certificate should contain UDIN (Unique Document Identification Number) along with details of credit notes, relevant invoice numbers against such credit note, proportionate ITC reversal amounts and details of Form GST DRC-03/ return/ other documents through which ITC is reversed by the recipient.</li></ul> <p><b>For tax amounts (CGST + SGST+ IGST) w.r.t. discounts not exceeding Rs. 5,00,000/-</b></p> <ul style="list-style-type: none"><li>• <b>Instead of a CA / CMA certificate</b>, supplier to <b>procure an undertaking / certificate from the recipient</b> stating that ITC attributable to such discounts is reversed along with details of credit notes, relevant invoice numbers against such credit note, ITC reversal amounts and Form GST DRC-03/ return/ other documents through which ITC is reversed by the recipient.</li></ul> <p>The above-mentioned certificates / undertakings will be considered as admissible evidence for both present and past periods for any requirements in this matter before tax authorities.</p>

### SDU Comments:

- Taxpayers should initiate obtaining the relevant certificates / undertakings (as applicable) from their customers for all ongoing proceedings.
- It is expected that concluded assessments are not reopened for want of certificate / undertaking.

# Taxability of ESOP/ ESPP / RSUs provided by Foreign Company to employees of its Indian Subsidiary -

(Circular No. 213/07/2024- GST)

**Background** – Foreign Holding Companies are issuing stock options/ securities to employees of their Indian subsidiaries, through various plans like Employee Stock Option (ESOP)/ Employee Stock Purchase Plan (ESPP)/ Restricted Stock Unit (RSU) and the cost is reimbursed by such Indian subsidiaries to the Foreign Holding Company either at actuals or with a mark-up.

Issues/ Particulars	Clarifications
<p><b>Whether transfer of stock options/ securities by Foreign Holding Company directly to the employees of Indian Subsidiary Company and subsequent reimbursement of cost of such options/ securities by Indian subsidiary to Foreign Holding Company will be considered as an import of service and thereby, liable to GST under reverse charge in the hands of Indian subsidiary.</b></p>	<ul style="list-style-type: none"><li>• Transfer of stock options / securities by Foreign Holding Companies are transactions in securities and thereby, <b>neither considered as supply of goods nor services.</b></li><li>• Stock Options / securities, <b>is part of employee remuneration</b> and hence, neither supply of good nor service (<i>Entry 1 to Schedule III of CGST Act, 2017</i>).</li><li>• <b>Reimbursement of cost</b> by the Indian Subsidiary Company to Foreign Holding Company (<b>on a cost to cost basis</b>) for transfer of stock options/ securities which is neither supply of goods nor services <b>cannot be treated as consideration for import of services</b> by the Indian Subsidiary Company from Foreign holding Company and hence, such reimbursement is not liable to GST.</li></ul>



# Taxability of ESOP/ ESPP / RSUs provided by Foreign Company to employees of its Indian Subsidiary -

(Circular No. 213/07/2024 -GST)

Issues/ Particulars	Clarifications
<b>Whether any additional fee, mark-up or commission charged by Foreign Holding Company over and above cost of options/ securities will be regarded as import of service and thus, liable to GST?</b>	Any additional amount or fee (over & above the cost of options/ securities) charged by the Foreign Holding Company to the Indian Subsidiary Company will be regarded as consideration for facilitating/ arranging the transaction in stock options/ securities. The same will qualify as consideration for import of service and thus, will be leviable to GST under reverse charge in the hands of Indian Subsidiary Company.

## SDU Comments:

- Basis the Circular No. 210/04/2024-GST dated 26.06.2024, if no self-invoice was raised by the Indian Subsidiary Company towards the additional fee / mark-up / commission and the Indian Subsidiary Company is eligible for full ITC, then the value of supply i.e. deemed open market value, shall be considered as "NIL".
- While taxability of stock options / securities by Indian Holding Company to employees of Indian Subsidiary Company is not specifically addressed, the analogy from the Circular No. 213/07/2024-GST dated 26.06.2024 may be drawn to determine the levy of GST under forward charge for the Indian Holding Company.

## Reversal of ITC w.r.t premium excluded from taxable value of life insurance policies -

(Circular No. 214/08/2024 -GST)

Issues/ Particulars	Clarifications
<p><b>Whether the amount of life insurance premium excluded from taxable value (as per Rule 32(4) of CGST Rules), will be treated as non-taxable supply/ exempt supply for the purpose of reversal of common ITC in terms of Section 17(1) &amp; (2) of CGST Act r/w Rule 42 &amp; 43 of CGST Rules, 2017.</b></p>	<ul style="list-style-type: none"><li>• The supply of services of life insurance services is taxable under the GST laws.</li><li>• The amount of <b>premium excluded from taxable value</b> of life insurance policies (i.e. amount allocated towards investment / savings), as per Rule 32(4) of CGST Rules, 2017 <b>cannot be considered as a non-taxable or exempt supply.</b></li><li>• Accordingly, there is <b>no requirement for reversal of common ITC</b> for such amount, in terms of Section 17(1) and 17(2) CGST Act, 2017 r/w Rule 42 and Rule 43 of CGST Rules, 2017.</li></ul>

## Taxability of salvage/wreckage value earmarked in the claim assessment of damage to motor vehicles - (Circular No. 215/09/2024 -GST)

Issues/ Particulars	Clarifications
<b>Whether insurance company is liable for GST on the salvage/wreckage value earmarked in the claim assessment of the damage caused to motor vehicle?</b>	<ul style="list-style-type: none"><li>• <b><u>Where salvage/ wreckage remains the property of insured/ policy holder</u></b> Where due to conditions mentioned in the insurance contract, the <b>Insurance Company are deducting the value of salvage/ wreckage value</b> from the claim amount, the salvage remains the property of the insured and hence, the insurance companies are <b>not liable</b> to discharge GST on such value of salvage/ wreckage.</li><li>• <b><u>Where salvage/ wreckage becomes the property of the Insurance Company</u></b> Where due to conditions mentioned in the insurance contract, the <b>insurance claim is settled for full claim amount without deducting value of salvage/ wreckage</b>, the salvage becomes the property of insurance company. In such cases, the Insurance Company is <b>obligated</b> to discharge GST on supply of salvage to the salvage buyer.</li></ul>

## GST Treatment in cases of warranty/ extended warranty - (Circular No. 216/10/2024 -GST)

**Background** – The previous clarification in Circular No. 195/07/2023 with respect to replacement under warranty **addresses only** situations involving **“replacement of parts”** and **does not refer** to the situations involving **“replacement of goods”**. The current circular clarifies on the replacement of goods. The clarification provided earlier for the replacement of parts shall be applicable in the case of goods also.

Issues/ Particulars	Clarifications
<p><b>Scenario – 1:</b></p> <p><b>Under warranty, manufacturer supplies replacement of parts and/or goods to the customer without any consideration</b></p>	<p><b>Clarification on Taxability</b></p> <ul style="list-style-type: none"><li>• <b>No GST is payable by the Manufacturer</b> on the <b>replacement of parts and/or goods</b> supplied to the customer, as the cost of such parts and/or goods has already been recovered at the time of the original supply.</li><li>• GST is payable only if additional consideration is charged for the replacement of parts and/or goods</li></ul> <p><b>Clarification on Input Tax Credit</b></p> <ul style="list-style-type: none"><li>• Replacement of parts and/or goods provided by Manufacturer under warranty <b>cannot be considered</b> as <b>‘Exempt supplies’</b> as their cost has already been recovered at the time of original supply.</li><li>• Hence, Manufacturer is <b>not</b> required to <b>reverse ITC</b> on replacement of <b>parts and/or goods</b> provided under warranty.</li></ul>

## GST Treatment in cases of warranty/ extended warranty - (Circular No. 216/10/2024 -GST)

Issues/ Particulars	Clarifications
<p><b>Scenario – 2:</b>  <b>Under warranty, the Distributor (on behalf of the Manufacturer) provides replacement of parts/ goods out of his own stock to the customer and subsequently gets replenished from the manufacturer without any consideration.</b></p>	<p><b>Clarification on Taxability</b></p> <ul style="list-style-type: none"> <li>• <b>No GST is payable by the Distributor</b> on replacement of parts /goods supplied to the customer on behalf of the Manufacturer out of his own stock, as no consideration flows from the Customer to the Distributor.</li> <li>• Also, no GST is payable by the manufacturer on the replenishment of such parts/ goods provided to the distributor.</li> <li>• <b>GST is payable only if additional consideration</b> is charged by the distributor to the customer or manufacturer for replacement of parts and/or goods.</li> </ul> <p><b>Clarification on Input Tax Credit</b></p> <ul style="list-style-type: none"> <li>• <b>Question of reversal of ITC will not arise</b> in the hands of the Distributor as the parts and/or goods provided by the Distributor are on behalf of the Manufacturer.</li> </ul>
<p><b>Scenario – 3:</b>  <b>Extended warranty is given to Customers “<u>at the time of Original Supply of goods</u>” – by “<u>Third Party or Original Equipment manufacturers</u>”</b></p>	<ul style="list-style-type: none"> <li>• If extended warranty <b>agreement is entered at the time of original supply of goods</b>, and the supplier of the extended warranty is different from the supplier of goods, then consideration for such an extended warranty will be <b>treated as a separate supply from the original supply and Qualifies as Supply of Services.</b></li> </ul>

## GST Treatment in cases of warranty/ extended warranty - (Circular No. 216/10/2024 -GST)

Issues/ Particulars	Clarifications
<p><b>Scenario – 4:</b>  <b>Extended warranty is given to Customers <u>“Subsequent to or After the Original Supply”</u> – by <u>“Third Party or Manufacturers”</u></b></p>	<ul style="list-style-type: none"> <li>• If extended warranty <b>agreement is entered at any time after the original supply</b>, then it is <b>treated as a separate contract</b> and GST would be payable by the manufactures / distributor / third party depending on the nature of the contract.</li> <li>• Extended warranty is in the nature of conveying of an “assurance” and not an actual replacement of parts or repairs. Accordingly, it qualifies as <b>“Supply of Services”</b>.</li> </ul>
<p><b>Scenario – 5:</b>  <b>Extended warranty is given to Customers <u>“at the time of Original Supply of goods”</u> – by <u>“the Supplier of Original Supply”</u></b></p>	<ul style="list-style-type: none"> <li>• If the extended warranty <b>agreement is entered at the time of original supply</b>, and the supplier of extended warranty is the same as that of the supplier of goods, the consideration for such extended warranty will become a <b>part of the value of composite supply</b>, the principal supply being the supply of goods, GST would be payable as applicable to goods.</li> </ul>

# ITC entitlement for insurance companies on motor vehicle repairs on reimbursement -

(Circular No. 217/11/2024 -GST)

**Background** – The Insurance Companies engaged in providing general insurance services in respect of Motor vehicles, insure cost of repairs/damages of motor vehicles incurred by the Policyholders and settle the claims in two modes i.e. Cashless or Reimbursement. The circular clarifies ITC entitlement to insurance companies in different circumstances on claims given to policyholders.

#	Issues/ Particulars	Clarifications
1	Whether ITC is available to insurance companies in respect of repair expenses reimbursed to Policyholders in case of <b><i>“Reimbursement mode” of claim settlement ?</i></b>	<ul style="list-style-type: none"><li>• In reimbursement mode of claim settlement, the payment made by the insurance company to insurer or policyholder to the extent of approved cost of repair services considered as <b><i>“Recipient” under GST laws.</i></b></li><li>• Accordingly, <b>ITC is available</b> to Insurance Companies in respect of motor vehicle repair expenses paid to policyholders in case of reimbursement mode of claim settlement.</li></ul>
2	To <b>what extent is ITC available</b> to insurance companies when claims are settled through reimbursement, and the garage <b>invoice exceeds the approved claim cost?</b>	<ul style="list-style-type: none"><li>• <b>Where Two Separate Invoices are Raised by Garage in respect of repair services:</b><ul style="list-style-type: none"><li>✓ To the <b><i>“insurance company for approved claim costs”;</i></b></li><li>✓ To the <b><i>“policyholders for repair service in excess of the approved claim cost”;</i></b></li></ul><b>ITC is eligible to the extent of invoice issued to the insurance company in respect of repair services to the extent of an approved claim cost. The ITC on the invoice issued to the Policyholder in respect of “Excess of approved claim cost” is not eligible.</b></li><li>• <b>Where Single Invoice is Raised by Garage on full amount</b> - ITC is available to the insurance company <b><i>“only to the extent of reimbursement of the approved claim cost”</i></b> to the policyholder, and not on the full invoice value.</li></ul>

# ITC entitlement for insurance companies on motor vehicle repairs on reimbursement -

(Circular No. 217/11/2024- GST)

#	Issues/ Particulars	Clarifications
3	Whether ITC is available to the insurance companies where the invoice for the <b>repair of the vehicle is "not in name of the insurance company"</b> .	ITC will not be available to the insurance company in respect of such an invoice as the condition of clause (a) and (aa) of section 16(2) of the CGST Act is not satisfied.



# Taxability of providing loan by Overseas affiliate to Indian affiliate/related person -

(Circular No. 218/12/2024- GST)

Issues/ Particulars	Clarifications
<b>Activity of providing loans by <u>“overseas affiliate to its Indian affiliate or between a related person”</u></b>	<b>Where No Consideration involved:</b> It is clarified that when processing / administrative / loan granting charges are <b>not</b> charged for extending a loan, GST is not leviable.  <b>Where Consideration involved:</b> When processing / administrative / loan granting charges is <b>“charged over and above interest or discount”</b> between related persons, such charges is treated as a <b>“Supply of services” and liable to GST</b>

## ITC on ducts and manholes used in network of OFCs - (Circular No. 219/13/2024- GST)

Issues/ Particulars	Clarifications
<b>Whether ITC on “ducts and manholes” used in the network of OFCs available to the “Telecommunication Sector”?</b>	<ul style="list-style-type: none"><li>• The Ducts and Manholes are basic components for Optical fiber cable (OFC) network used in providing telecommunication services.</li><li>• Ducts and manholes are covered under the definition of “Plant and Machinery” as mentioned in the explanation to Section 17 of the CGST Act, 2017.</li><li>• Ducts and Manholes not specifically excluded from the definition of “Plant and Machinery”.</li><li>• They are neither in nature of land, building or civil structure nor are in the nature of telecommunication towers or pipelines laid outside the factory premises.</li><li>• Hence, ITC on ducts and manhole used in the network of OFCs is eligible.</li></ul>

## Custodial Services provided by Banks/Financial Institutions to FPI- (Circular No. 220/14/2024- GST)

Issues/ Particulars	Clarifications
<b>Place of supply of Custodial Services provided by the Banks to Foreign Portfolio Investors (FPI)</b>	<ul style="list-style-type: none"><li>• As per Section 13(8)(a) of the IGST Act, 2017 banking services provided to the <b>“Account holders”</b>, the Place of supply would be the <b>“location of the supplier of services”</b> .</li><li>• Now, it is clarified that Custodial Services are not covered under services provided by the Banks/Financial institutions to FPI as <b>“Account holders”</b>.</li><li>• Accordingly, the place of supply of services provided by the Banks/financial institutions to FPI is not covered under Section 13(8) (a) of the IGST Act, 2017.</li><li>• The place of supply of Custodial Services provided by the Banks to FPI will be “location of the recipient of services” in terms of Section 13 (2) of the IGST Act, 2017.</li></ul>

### SDU Comments:

- The Services provided by the Banks/financial institution would qualify as “Export of Services” as the place of supply is outside India (i.e. where the location of the recipient is outside India).
- Refund claim of ITC may be evaluated going forward.
- Refund of ITC for a past period may be evaluated based on this circular.

## Time of Supply for NHAI projects under HAM model - (Circular No. 221/15/2024- GST)

**Background** – This clarification addresses the time of supply for services related to the construction and maintenance of National Highway Projects under the HAM model, where payments are made both during the construction period and through deferred annuities.

Issues/ Particulars	Clarifications
<p><b>Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model</b></p>	<p><b>Single Contract for Construction and O&amp;M:</b></p> <ul style="list-style-type: none"> <li>HAM contracts are single agreements covering both construction and Operation &amp; Maintenance (O&amp;M) of highways.</li> <li>Payments are staggered over the contract period to ensure accountability for repair and maintenance.</li> </ul> <p><b>Continuous Supply of Services:</b></p> <ul style="list-style-type: none"> <li>The contract is considered as a "continuous supply of services" as defined in Section 2(33) of the CGST/SGST Act, 2017, with payments being made periodically or upon completion of specified events.</li> </ul> <p><b>Time of Supply for services in nature of construction and maintenance of National Highway Projects under the HAM model:</b></p> <ul style="list-style-type: none"> <li><b>If Invoice Issued on Time:</b> Time of supply is the earlier of the date of invoice issuance or receipt of payment.</li> <li><b>If Invoice Not Issued on Time:</b> Time of supply is the earlier of the date of provision of service or receipt of payment. HAM contracts being covered by provisions of continuous supply of services, the provision of service for issuance of invoice will be said to have been completed as per due date specified in the contract.</li> <li><b>Taxability of interest collected under HAM contracts:</b> Where interest is payable as per the HAM Contract, the same would be includible in the taxable value for the purpose of payment of tax.</li> </ul>

## Time of supply for Spectrum usage services - (Circular No. 222/16/2024-GST)

Issues/ Particulars	Clarifications
<p><b>Clarification on time of supply of services of spectrum usage and other similar services under GST.</b></p>	<p><b>Service Provider and Recipient:</b></p> <ul style="list-style-type: none"> <li>The Government of India (DoT) is the service provider.</li> <li>The telecom operator is the recipient, paying GST on a reverse charge basis (Notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017).</li> </ul> <p><b>Continuous Supply of Services:</b> Spectrum usage is a continuous supply of services as defined under Section 2(33) of the CGST/SGST Act 2017 since the spectrum usage service is agreed to be provided by DoT continuously for a period exceeding three months with periodic payment obligation.</p> <p><b>Time of Supply:</b> As per Section 13(3) of the CGST Act, the time of supply of service liable under reverse charge is the earlier of the date of payment entry in the recipient's books or debit in the bank account, or sixty days from the date of invoice or similar document.</p> <p>The Frequency Assignment Letter issued by DOT is merely a bid acceptance document, but not an invoice. Therefore, invoice should be issued as per the contract's payment schedule and Time of Supply should be ascertained accordingly against each such installment separately as mentioned in the Frequency Assignment Letter .</p> <p><b>Notes:</b></p> <ol style="list-style-type: none"> <li>Where, complete payment is made for spectrum purchase as upfront payment, GST will become payable on such upfront payment, in all other cases time of supply will be determined as per payment schedule specified in Frequency Assignment Letter.</li> <li>The said method of computing time of supply will equally be applicable in all such cases, where it involves allocation of natural resources by, government by way of formal bids.</li> </ol>

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