

Compliances of GST in Banking Sector



The Institute of Chartered Accountants of India
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New Delhi

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Foreword

The banking industry plays a key role in the world's economy by offering various financial services to the stakeholders of the society. Banks do various tasks like taking in money deposits, giving loans, handling payments, managing investments and many more. Additionally, new technologies have greatly changed the way banks operate, making their services more efficient and accessible. The banking industry is heavily regulated to ensure stability, protect consumers, and prevent financial crimes.

In order to perform bank audits in the most effective way, members need to have an updated knowledge of the provisions of GST especially applicable to Banks. Keeping in view this requirement of the members and in furtherance of its objective of dissemination of knowledge and awareness through technical publications, newsletters, E-learning and organizing various programmes, Certificate courses, webcasts etc. for all stakeholders, the GST & Indirect Taxes Committee of Institute of Chartered Accountants of India (ICAI) has come out with February, 2024 version of its publication titled '**Compliances of GST in Banking Sector**'. All the provisions which may prove to be relevant for the Banking industry, has been collated in the best manner possible in the publication.

I commend the efforts of CA. Sushil K. Goyal, Chairman and CA. Rajendra Kumar P, Vice-Chairman and other members of GST & Indirect Taxes Committee of ICAI who have contributed in revising and updating this publication.

I am confident that members will find this publication of great use in carrying out their professional assignments by discharging the statutory functions and responsibilities in an efficient and effective manner.

Date: 01.03.2024
Place: New Delhi

CA. Ranjeet Kumar Agarwal
President, ICAI

Preface

Banking industry is one of the most significant backbones of an economy. Banks play a crucial role by channelling funds from savers to borrowers, thereby promoting economic growth. Banking industry, through a vast and complex sector, is a major driver of economic growth. The banking industry is constantly evolving hence, it is important to stay up to date on the latest trends. Banks face various challenges, including regulatory compliance, technological disruption, economic uncertainties and security threats, which require banks to adapt and evolve continually. These factors make the work of auditors even more demanding. Compliance with GST law forms one of the most pertinent parts when conducting the audit of banks.

Keeping in view the above requirements, the GST & Indirect Taxes Committee has revised its e-publication titled 'Compliances of GST in Banking Sector'. The topics of GST which may be relevant to income earned by banks, expenses incurred by banks, claim of input tax credit, applicability of reverse charge, input service distributor and other procedural requirements of banks have been updated with the most recent provisions to enable the members in performing their duty in the best possible way.

We are grateful to CA. Ranjeet Kumar Agarwal, President, ICAI and CA. Charanjot Singh Nanda, Vice- President, ICAI for the encouragement and support extended by them to the various initiatives of the GST & Indirect Taxes Committee. We also sincerely thank CA. Sourabh Baser for his untiring efforts and timely response in revising this publication. Last, but not the least, we commend the efforts made by the Secretariat of the Committee in providing the requisite technical and administrative assistance for successfully releasing this publication.

We are positive that this publication will prove to be valuable for members while performing their bank audit assignments. We eagerly anticipate feedback from members to enhance this publication in future editions. We will be glad to receive your valuable feedback at gst@icai.in. We also request you to visit our website <https://idtc.icai.org> for regular updates and share your suggestions and inputs, if any, on indirect taxes.

CA. Rajendra Kumar P
Vice-Chairman
GST & Indirect Taxes Committee

CA. Sushil Kumar Goyal
Chairman
GST & Indirect Taxes Committee

Date: 01.03.2024
Place: New Delhi

Chapter 1

Banking Sector – An Overview

SERVICE TAX APPLICABILITY ON BANKS

Service Tax was introduced in India on 01.07.1994. However, Banking and Other Financial Services had been brought within the ambit of Service Tax w.e.f. 16.07.2001.

Services mentioned in section 65(12)(a) of the Finance Act, 1994 were made taxable, if provided by:

- (a) Banking company and financial institution including NBFCs from July 16, 2001; or
- (b) Any other body corporate from August 16, 2002; or
- (c) Any other commercial concern from September 10, 2004.

Services mentioned in section 65(12)(b) of the Finance Act, 1994 are taxable, if provided by:

- (a) Banking companies, financial institutions including NBFCs and other body corporates from July 1, 2003; or
- (b) Commercial Concerns from September 10, 2004.

Further, with effect from May 16, 2008, section 65(12) has been amended to levy service tax on foreign exchange broking and purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer also.

Banking Services under Negative List of Services w.e.f. July 1, 2012

After the **introduction of Negative List i.e. with effect from July 1, 2012**, Service Tax was applicable on all services provided by banks except followings:

- Services by the Reserve Bank of India;
- Services by way of—

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- (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
- (ii) *inter se* sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

Rate of Service Tax

| Period | Service Tax | | | EC | SHEC | SBC | KKC | Total Rate |
|--|-------------|----|----|------|------|-----|-----|------------|
| 16.07.2001 to 13.05.2003 | 5% | - | - | - | - | - | - | 5% |
| 14.05.2003 to 09.09.2004 | 8% | - | - | - | - | - | - | 8% |
| 10-09-2004 to 17-04-2006 | 10% | 2% | - | - | - | - | - | 10.20% |
| 18-04-2006 to 10-05-2007 | 12% | 2% | - | - | - | - | - | 12.24% |
| 11-05-2007 to 23-02-2009 | 12% | 2% | 1% | - | - | - | - | 12.36% |
| 24-02-2009 to 31-03-2012 | 10% | 2% | 1% | - | - | - | - | 10.30% |
| 01-04-2012 to 31-05-2015 | 12% | 2% | 1% | - | - | - | - | 12.36% |
| 01.06.2015 to 14-11-2015 | 14% | - | - | - | - | - | - | 14% |
| 15.11.2015 to 31.05.2016 | 14% | - | - | 0.5% | - | - | - | 14.5% |
| With effect from 01.06.2016 upto 30.6.2017 | 14% | - | - | 0.5% | 0.5% | - | - | 15% |

Banking Services under GST w.e.f. July 1, 2017

In the GST regime, there is no concept of Negative List and the taxable event

is supply of goods or services or both. In case of banking services also, GST is applicable on the supply of services unless such services are exempted by way of notification or the same are classified as non-GST supplies. Additionally, following activities shall be treated as supply even if made without consideration as specified in Schedule I of the Central Goods and Services Act, 2017 (“**the CGST Act**”) and are subject to tax, which is a paradigm shift from the earlier regime:

- Permanent transfer or disposal of business assets where input tax credit (“**ITC**”) has been availed on such assets.
- Inter Unit Supply: Supply of goods/ services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business.

This clause encompasses within its purview, any supply of goods or services or both between:

- different branches of the bank having separate GST registration; or
- between the head office and different branches of the bank having separate GST registration,

irrespective of the fact that there is no consideration for such services between the supplier and the recipient.

Hence, it is important to identify such transactions which may get covered within the deeming provisions as per Schedule I and attract tax liability. The taxable value for such transactions shall be determined as per section 15 read with rule 28 of the Central Goods and Services Rules, 2017 (“**the CGST Rules**”). Further, *Circular No. 199/11/2023 – GST dated July 17, 2023* shall be referred to before concluding on the taxability of deemed transactions between distinct persons i.e. person having multiple GST registrations within one State or Union territory or across multiple States or Union territories.

Since, such transactions are generally not captured in books of accounts therefore, auditor should apply substantial audit procedure to check compliances.

Tax Framework

Service Tax under earlier regime was levied and collected by the Central Government, however, with the implementation of GST, CGST/SGST is levied by Central / State Government respectively on all intra-State supplies and IGST is levied by the Central Government on all inter-State supplies.

Relevant Exemptions under GST

As there is no Negative List concept under GST, all the supplies by a bank are taxable unless specifically exempted under the exemption notification¹. The exemption notification specifically exempts following services provided by a bank:

- Services by way of—
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);
 - (ii) *inter se* sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.
- Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
- Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Explanation. — For the purposes of this entry, “*acquiring bank*” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

- Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.

It is important to note that the aforesaid exemption only covers the guarantee given by Central Government, State Government, Union territory to their undertakings. All other guarantee transactions between related persons are liable to GST in absence of any specific exemption.

- Services by way of collection of contribution under the Atal Pension Yojana.

¹ Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017, as amended from time to time and corresponding notifications under the SGST and UTGST Legislations.

- Services by way of collection of contribution under any pension scheme of the State Governments
- Services by the following persons in respective capacities —
 - (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
 - (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
 - (c) business facilitator or a business correspondent to an insurance company in a rural area.
- Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).

Where-

The intermediary of financial services in IFSC is a person, -

- (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or
 - (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or
 - (iii) who is registered under the Insurance Regulatory and Development Authority of India (international Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or
 - (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.
- Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government and Union territory.

As per the exemption notification, for the aforesaid purposes:

- “banking company” has the same meaning as assigned to it in clause (a) of Section 45A of the Reserve Bank of India Act, 1934 (2 of 1934).

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- “business facilitator or business correspondent” means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by the Reserve Bank of India.
- “interest” means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.
- Further, relevant additional exemption under the IGST Act, 2017 is in relation to services imported by a unit or a developer in the Special Economic Zone for authorised operations. [*Notification No. 18/2017-Integrated Tax (Rate) dated 5-7-2017*]

Furthermore, the CBIC *vide Circular No. 83/02/2019-GST, dated 1-1-2019* clarified that Services provided by Asian Development Bank (ADB) and International Finance Corporation (IFC) are exempt from GST. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC. The said exemption was also extended to service tax regime as well by way of clarification *in Circular No. 211/1/2019 S.T. dated 15.01.2019*.

RATE OF GST ON BANKING & OTHER FINANCIAL SERVICES

There is an increase in the tax rate from 15% in service tax (erstwhile indirect tax) to 18% under GST on the service charges and other amounts collected in lieu of the taxable supplies made by the banks including but not limited to credit card related services, fund transfer services, ATM transactions services, processing fees on loans etc.

Note- It is essential to note that Service Tax was applicable in India excluding the State of Jammu & Kashmir. While GST is applicable in India w.e.f. 01.07.2017 including sea water upto 12 nautical miles and in Jammu & Kashmir w.e.f. 08.07.2017.

With the advent of Jammu and Kashmir Reorganisation Act, 2019, from 31st October, 2019, State of Jammu and Kashmir has been re-constituted into two union territories, namely Jammu and Kashmir (Union territory of Jammu and Kashmir with Legislature) and Ladakh (Union territory of Ladakh without Legislature) to which the Jammu and Kashmir Goods and Services Tax Act,

2017 and the Union Territory Goods and Services Tax Act, 2017 respectively shall be applicable.

TIME OF SUPPLY UNDER GST

The time of supply of services provided by the banks shall be determined in reference to section 13 of the CGST Act shall be the earliest of the following dates, namely: —

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply

Explanation: -

- The date of receipt of payment: The date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier
- Date of issue of invoice: As per section 31(2) read with rule 47, where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty five days from the date of the supply of service. Further, an insurer or a banking company or a financial institution, including a non-banking financial company, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made..

It is pertinent to mention that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

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In case a banking company is making supply of any goods in normal course of business e.g., supply of old furniture and IT equipments, the time of supply provisions shall be governed by section 12 of the CGST Act, 2017.

Time of supply in case of reverse charge

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be, earlier of the following dates, namely:-

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier;

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

VALUE OF TAXABLE SUPPLY UNDER GST

The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply.

Further, explanation to section 15 of the CGST Act deems the persons to be "*related persons*" if:

- Such persons are officers or directors of one another's businesses;
- Such persons are legally recognised partners in businesses;
- Such persons are employer and employee;
- any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both the persons;
- One of them directly or indirectly controls the other;

- Both of them are directly or indirectly controlled by a third person;
- Together they directly or indirectly control a third person;
- They are members of the same family; or
- They are sole agent or sole distributor or sole concessionaire of the other.

Section 15 of the CGST Act, 2017 also provides for specific inclusions and exclusions from the transaction value to arrive at the value of supply liable to GST.

The transactions value shall include:

- Taxes levied under any law other than GST Law, if charged separately by the supplier
- Any amounts paid by recipient that are obligation of supplier to pay
- Incidental expenses charged by the supplier
- Interest or late fee or penalty for delayed payment of any consideration for any supply
- Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments

The transactions value shall exclude:

- the value of supply will not include discount, provided:
 - a. It is allowed before or at the time of supply and is duly recorded on the invoice issued in respect to such supply. Or
 - b. It is allowed after supply, provided that it is established in agreement linked to specific supplies and corresponding credit is reversed by recipient.

If the transaction value cannot be determined as above, reference to CGST Rules related to valuation is permitted. These are cases where either the parties are related, or the price is not the sole consideration.

Also, Government is free to notify tariff values in specific cases to determine the tax payable in such cases. This would prevail over the valuation provided for in section 15. Valuation Rules are prescribed under Chapter IV of the CGST Rules from Rule 27 to Rule 35.

Some key transactions relevant for banking industry and the related valuation provisions are discussed hereunder:

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| | | |
|--|---|--|
| Banking sector provides services of purchase and sale of foreign currency to its customers, the value of which can be ascertained in terms of Rule 32(2) of the CGST Rules as: | | |
| OPTION -I | OPTION -II | |
| <p>When exchanged from or/ to INR: Difference of Buying rate / Selling rate and RBI reference rate X Total units of currency (If RBI reference rate is not available, value shall be 1% of gross amount of INR received or provided)</p> <p>Neither of two currencies exchanged is INR Value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into INR on that day at the reference rate provided by RBI.</p> | Where Amount of currency exchanged | |
| | Upto ₹ 1 lakh | 1% of the gross amount of currency exchanged or ₹ 250/-, whichever is higher. |
| | ₹ 1 lakh and up to ₹ 10 lakhs | ₹ 1,000/- plus 0.5% of the gross amount of currency exchanged above ₹ 100,000/- |
| | Exceeding ₹ 10 lakhs | ₹ 5,500/- plus 0.10% of the gross amount of currency exchanged above ₹ 10 lakhs or ₹ 60,000/-, whichever is lower. |

The option exercised by the supplier of services for a financial year shall not be withdrawn during the remaining part of that financial year.

Further, it is pertinent to mention here that rule 34 of the CGST Rules provides the rate of exchange of currency, other than Indian rupees, for determination of value as under:

Transactions undertaken in foreign currency must be converted into Indian Rupees. The rate of exchange for the determination of the value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 and for the determination of the value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act.

Valuation of goods repossessed from a defaulting borrower

As per rule 32(5) of the CGST Rules, 2017, the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

Valuation of services between the distinct and related persons (excluding agents)

Generally, banks would have lot of common/ shared services being supported from Head Office such as call centre, security software etc. Further, many times one branch would internally provide service to other branches for example: resolving issue of a customer having PAN India accounts, providing local information etc. to other branches etc.

The value will be determined in terms of rule 28(1) of the CGST Rules:

| | |
|---|---|
| (a) The open market value of such supply | |
| (b) If open market value is not available | Value of supply of goods or services of like kind and quality |
| (c) If value of supply is not determinable under clause (a) or (b) | Value as determined by application of Rule 30 or Rule 31, in that order |
| <i>Provided that where goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person</i> | |
| <i>Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services</i> | |

Circular No. 199/11/2023 – GST dated July 17, 2023 shall be referred to before concluding on the taxability of deemed transactions between distinct persons i.e., person having multiple GST registrations within one State or Union

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territory or across multiple States or Union territories. The complete Circular can be referred to in Annexure 1, at the end of this book.

As per the aforesaid Circular, clarification has been issued on the internally generated services within a same entity having multiple GSTINs i.e. deemed supply transactions between distinct entities.

The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28(1), the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of the CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services between multiple branches of the bank or between HO and the branches of bank, the value of the said supply of services declared in the invoice by the supplier branch/HO shall be deemed to be open market value of such services, if the recipient branch/HO is eligible for full input tax credit.

Accordingly, in cases **where full input tax credit is available to a recipient**, the value declared on the invoice by supplier to the said recipient in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.

Further, in such cases where full input tax credit is available to the recipient, if supplier has not issued a tax invoice to the recipient in respect of any particular services being rendered by the supplier to the said recipient, the value of such services may be deemed to be declared as Nil by supplier to branch, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.

In respect of internally generated services provided by the supplier to the recipient, the cost of salary of employees of the supplier, involved in providing the said services to the recipient, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases **where full input tax credit is not available to the concerned recipient**.

It is important to note that as per 2nd proviso to section 17(4), the restriction of 50 percent input tax credit eligibility shall not apply to tax paid on supplies

made between distinct entities of a banking company. The said proviso has been discussed in detail in subsequent chapters.

Rule 30 of the CGST Rules -

Value of supply based on cost i.e. cost of supply plus 10% mark-up.

Rule 31 of the CGST Rules –

Value of supply determined by using reasonable means consistent with principles and general provisions of GST law.

Determination of Value of supply in case of Corporate Guarantee

The value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.

PLACE OF SUPPLY RELEVANT FOR BANKING INDUSTRY

| WHERE THE LOCATION OF SUPPLIER OF SERVICES AND THE LOCATION OF THE RECIPIENT OF SERVICES IS IN INDIA | | |
|---|---|--|
| Default Rule for the services other than the 12 specified services | | |
| S. No. | Description of Supply | Place of Supply |
| 1. | B2B | Location of such Registered Person |
| 2. | B2C | (i) Location of the recipient where the address on record exists, and (ii) Location of the supplier of services in other cases |
| Rule for the other specified services | | |
| 1. | Services directly in relation to immovable property including hotel accommodation | Location at which the immovable property or boat or vessel is located or intended to be located. If located outside India: Location of the recipient. |
| 2. | Training and performance appraisal | B2B: Location of such Registered Person B2C: Location where the services are actually performed. |

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| | | |
|----|---|---|
| 3. | Organisation of an event | B2B: Location of such Registered person B2C: Location where the event is actually held. If the event is held outside India: Location of the recipient |
| 4. | Banking and other financial services including stock broking services | Location of the recipient of services on the records of the supplier Location of the supplier of services if the location of the recipient of services is not available on the records of the supplier |
| 5. | Insurance services | B2B: Location of such Registered Person B2C: Location of the recipient of services on the records of the supplier |
| 6. | Advertisement services to the Government | The place of supply shall be taken as located in each of such States. Proportionate value in case of multiple States |

WHERE THE LOCATION OF THE SUPPLIER OF SERVICES OR THE LOCATION OF THE RECIPIENT OF SERVICES IS OUTSIDE INDIA

Default Rule for the cross-border supply of services other than nine specified services

| S. No. | Description of Supply | Place of Supply |
|--------|--|--|
| 1. | Any service other than specified services. | Location of the recipient of service. If not available in the ordinary course of business, the location of the supplier of service. |

Rule for the other specified services

| | | |
|----|--|--|
| 1. | Services supplied in respect of goods which are required to be | The location where the services are actually |
|----|--|--|

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| | | |
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| | <p>made physically available by recipient to supplier / a person acting on behalf of supplier.</p> <p>When services provided from a remote location by way of electronic means</p> <p>[Not applicable in case of goods that are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.]²</p> | <p>performed.</p> <p>The location where the goods are situated.</p> |
| 2. | Services supplied to an individual and requiring the physical presence of the recipient or person acting on his behalf | The location where the services are actually performed. |
| 3. | Immovable property-related services, including hotel accommodation | Location at which the immovable property is located or intended to be located. |
| 4. | Admission to or organisation of an event | The place where the event is actually held. |
| 5. | <p>If the said three services are supplied at more than one location. i.e.</p> <p>(i) Goods & individual related</p> <p>(ii) Immovable property-related</p> <p>(iii) Event related</p> | |
| 5.1 | At more than one location, including a location in the taxable territory | Its place of supply shall be the location in the taxable territory |

² Inserted vide *The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01-02-2019. Notified through Notification No. 1/2019-IT dt. 29.01.2019.*

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| | | |
|-----|--|--|
| 5.2 | In more than one State or Union territory | Its place of supply shall be each such State/Union territory in proportion to the value of services provided in each State |
| 6. | Online information and database access or retrieval services | Its place of supply is location of the recipient of services |

- In case, where the location of the banks or the location of the recipient of service is in India, section 12(12) of the Integrated Goods and Services Act, 2017 (“the IGST Act”), provides for the place of supply of services as -

The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services.

Provided that, if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

- In case, where the location of the banks or location of the recipient of service is outside India, section 13(8) of the IGST Act provides that-

The place of supply of the following services shall be the location of the supplier of services, namely: —

- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;*
- (b) intermediary services;*
- (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.*

Explanation - For the purposes of this sub-section, the expression, –

- (a) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;*
- (b) “banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;*

- (c) *“financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934;*
- (d) *“non-banking financial company” means, —*
 - (i) *a financial institution which is a company;*
 - (ii) *a non-banking institution which is a company, and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or*
 - (iii) *such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.*

Therefore, service provided by the bank to its account holder shall be deemed to be provided at the place where such bank is located.

Further, in terms of section 13 of the IGST Act, 2017, where Location of Supplier or Location of Recipient is outside India, place of supply will be the location of the recipient of the services. But, where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services. Therefore, service provided by the bank to person other than account holder located outside India, is location of the supplier of services. Accordingly place of supply of service provided by the bank to its customer located outside India shall be location of bank and CGST and SGST or UTGST, as the case may be, will be payable.

Further, section 2(13) of the IGST Act defines ‘intermediary’ as:

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

As inferred from section 13(8)(b) of IGST Act, place of supply in case intermediary services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders shall be the location of the supplier.

Compliances of GST in Banking Sector

To bring more clarity, it is indispensable to understand the term “location of supplier of services’ as defined under section 2(15) of IGST Act as-

Location of supplier of services means –

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (d) in the absence of such places, the location of the usual place of residence of the supplier.

Where, section 2(85) of the CGST Act, defines the term place of business as:

Place of business includes:

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called.

And section 2(50) of the CGST Act defines ‘fixed establishment’ as:

Fixed establishment means:

- a place (other than the registered place of business)
- which is characterised by –
 - a sufficient degree of permanence and
 - suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.

Chapter 2

Incomes Earned by Banks

Incomes are earned by banks from various sources other than interest. The interest income forms the major part of the incomes but in recent years due to globalisation, such a scenario has been changed and accordingly the banking sector has involved themselves into numerous activities resulting into variety of incomes. All such incomes are recorded in the books of accounts under various heads which ought to be analysed and decide taxability on the same. The income so earned, and their taxability are discussed as under:

1. Interest income

The income earned by way of grant of loans, deposits etc. is a taxable supply. However, by virtue of entry 27(a) of NN 12/2017-Central Tax (Rate) and entry 28(a) of NN 9/2017-Integrated Tax (Rate), no GST is payable on income earned by way of interest except interest involved in credit card services. The relevant extract of the said entry in NN 12/2017-Central Tax (Rate) is as under:

| Sl No. | Chapter, Section, Heading, Group or Service Code (Tariff) | Description of services | Rate (%) | Condition |
|---------------|--|---|-----------------|------------------|
| 27 | Heading 9971 | (a) Services by way of—(a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount <u>(other than interest involved in credit card services);</u> | NIL | NIL |

Therefore, audit from the perspective of GST into the same may be restricted to the fundamental question as to whether the income is rightly characterized as 'interest' to enjoy the exemption under GST, or taxable like the income earned from credit card services.

2. Commission income

The instant income is classified as a supply of service transaction and accordingly would be classified in terms of chapter heading as specified in the relevant notifications issued under GST.

Commission earned (on accrual) is liable to GST. For e.g.:

- (a) M/s. A Ltd. wants to invest in fixed securities / bonds which can be only routed through ICICI bank as they have exclusive rights for subscribing the same. ICICI bank gets 2% commission on the amounts so subscribed. For the period 2018-19, the bank earns ₹ 250 crores of commission from such subscription which is recorded as 'Other Income'. The auditor has to check whether GST is appropriately levied and paid on the said amount by complying with the due date for payment of GST. Also, it is important to verify the computations and returns filed to ensure that appropriate tax liability has been discharged by the bank.. If the tax is not discharged, then appropriate disclosure with regard to tax and interest would be required. Suitable disclosure as to whether any contingency exists in respect of applicable penalty may also be provided.

Further, review of agreements where commission is earned must be carried out thoroughly and if any milestone incentives, performance bonus, time bonus etc., is provided then appropriate tax treatment should be suggested.

- (b) ICICI bank gets 1% commission from private companies for providing them investment exposure in foreign markets. The same is liable for payment of GST and appropriate tax treatment should be followed and suggested. Disclosures as discussed above may be considered, if any tax liability is found to be unpaid.

Note - Where the investment activity is undertaken in another group company, but the banking entity provides leads to such investment activity for which it receives some (smaller) percent as commission, such transactions should be thoroughly analysed, and movement of funds be tracked properly. The provisions related to valuation of related party transactions shall also be adhered to while analysing such transactions.

3. Brokerage income

The instant income is classified as a supply of service transaction and accordingly would be classified in terms of chapter heading as specified in the relevant notifications issued under GST.

4. Agency charges

Generally, such income is earned by way of being appointed as an agent either by RBI, State Governments, Central Governments or by some corporates. Under such arrangements, banks act as a facilitator/collection centre and in lieu of provision of such services, banks collect certain fees as “Agency charges”. Such charges are liable for payment of GST. Very often, the underlying arrangement will be of agency, but it may be described in a contemporary terminology like ‘enablement charge’ or ‘facilitation fee’ or simple ‘management fee’ which may appear misleading.

The auditor needs to analyse the relevant agreements entered and has to study the flow of consideration and thereafter decide taxability and the amount on which GST is applicable. The same has to be communicated to the management, if no GST has been paid till date.

5. Portfolio management service

Generally, the said services are provided by different entities within the banking sector. Due to stiff competition and one-stop window for priority customer's (i.e. customers who are depositing amount beyond a certain limits) only one person provides all such services and thereafter relevant commissions are split between entities or costs are shared. In fact, inter-branch sharing of portfolio management services in lieu of the skill set available in selected branches between different States is taxable and a fair value has to be assigned to such transaction and applicable GST is payable on such transaction. Further, appropriate classification must be made for such supply of services under relevant chapter heading as per the notifications issued under GST.

6. Account maintenance charges

It is a common practice that in most of the banks certain charges are recovered towards maintenance. The said charges are nominal but the same is liable for payment of GST. Accordingly, the concerned concurrent /internal /statutory auditor should do well to check on this aspect of taxability and ensure compliance.

Further, even locker charges recovered from the customers on an annual basis is liable for payment of GST. There can be different modes of arrangement for availing such income, but such income is taxable under GST.

Compliances of GST in Banking Sector

The provisions relating to place of supply will become imperative while determining the correct nature of the transaction and thereafter taxability has to be decided. Further, appropriate classification must be made for such supply of services under relevant chapter heading as per the notifications issued under GST.

7. Credit/Debit card charges

Income earned by way of issuing and maintaining such transactions are liable for payment of GST. Therefore, auditor should carefully examine such transactions and appropriate disclosures be made in case of non-compliance with relevant tax provisions.

Note- Fees charged for card settlement is a consideration which is part of a separate transaction between the banks which are parties to this transaction and shall be liable to GST. This is a B2B supply and credit of this transaction is available. In short, GST will be levied on interchange fees on card settlement fees paid/shared by banks.

8. Digital payment facilities

Banks charge some convenience fees from the person who accepts payment through debit card, credit card or through other some other card service. The charges earned by the bank are liable to GST. However, no GST will be payable in respect to services provided by bank, to any person in relation to settlement of an amount up to ₹ 2000 in a single transaction transacted through credit card, debit card or charge card or other payment card service.

9. Sale and purchase of foreign currency

Banking companies receiving consideration for providing services by way of securities, foreign exchange broking and purchase or sale of foreign currency, including money changing is chargeable to GST on special value calculated as per option availed in terms of rule 32 of CGST Rules.

However, pursuant to entry no. 27(b) of *NN 12/2017-Central Tax (Rate)* and entry no. 28(b) of *NN 9/2017-Integrated Tax (Rate)*, inter-bank transactions of sale or purchase of foreign currency or transactions with authorized dealers of money changing are exempted under GST regime.

10. Other income

- Income earned by banks by way of penalties, retention charges etc. are liable for payment of GST.

For e.g.:

- (a) IVY Bank charges ₹ 2500/- to all those customers who maintains an average quarterly balance below ₹ 25000/-. Accordingly, the total collection of income from such source is ₹ 5,00,00,000/-, therefore IVY bank has to discharge GST on the same at appropriate rate.
- (b) IVY Bank charges ₹ 50/- for issuing DD. Such income is liable for payment of GST and the auditor must carefully scrutinise whether appropriate tax has been levied and paid. However, *Circular No. 178/10/2022-GST dated August 3, 2022* “The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.
- Realisation of payment from Non-Performing Assets (NPA) by way of disposal of NPA to an asset reconstruction company [ARC] or to any other buyer is a debatable issue. The taxability in such cases depends upon the structuring of the transaction. One way to view this transaction is that the whole transaction may be considered as an actionable claim and accordingly the same shall not be treated as supply under GST. The transaction shall be covered under clause 6 of Schedule III. The position was same in the erstwhile service tax/VAT regime. An alternate view would be that the transaction may be considered as an outright sale. When there is outright sale, the GST applicability will depend on the nature of underlying asset sold. In case of an outright sale of a NPA account as a going concern, the transaction shall qualify as a supply under GST. However, the transaction would still be exempted considering the exemption granted in terms of entry 2 classified under Chapter 99 as specified under exemption *NN 12/2017-Central Tax (Rate)*.

To summarise, all the income sources of the banks have to be thoroughly scrutinised specifically interest income from credit cards and thereafter the auditor has to comment on its taxability, compliance with tax payment along with interest, applicable penalty and transparency in disclosure in the returns filed.

Compliances of GST in Banking Sector

| Sl. No | Nature of Service | Remarks about Taxability |
|---------------|---|--|
| 1. | Assignment or Sale of Debts | Not chargeable (Sale, transfer or assignment of debts falls within the purview of the actionable claims, which are neither good nor service as per Schedule III of the CGST Act). Even if the same is considered as sale of business asset as going concern, the same is exempted under GST. |
| 2. | Bank Guarantee Commission Charges | Taxable |
| 3. | Bill Discounting | Exempt to the extent of interest component. However, commission, fees, brokerage or documentation charges will be taxable. |
| 4. | Interest and charges on delay/ non-payment of credit card bills | Taxable |
| 5. | Charges for issuance of Demand Draft | Taxable |
| 6. | Loan or other Documentation Charges | Taxable |
| 7. | Forward Contract in Currencies | Where the settlement takes place by way of actual delivery of underlying currency, then such forward contracts would be treated as normal supply of goods and liable to GST (Commission portion). Where the settlement takes place by way of net settlement of differentials of the forward rate over the prevailing market rate on the settlement date, the same would be falling within the purview of 'securities' as securities are neither 'goods' nor 'services' as |

Incomes Earned by Banks

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| | | defined in the CGST Act, 2017, and therefore future contracts are not chargeable to GST. |
| 8. | Future Contracts | Not Chargeable (Since it is financial derivative and falls within the definition of securities (which is neither goods nor service in GST) and hence they are not liable to GST. Commission and documentation charges will be liable to GST. |
| 9. | Income from Commercial Paper or Certificate of Deposit | Exempt, due to nature of interest. |
| 10. | Inspection Charges | Taxable |
| 11. | Interest/ Discount on Loans / Deposits or Advances | Exempt |
| 12. | Issuance of Bank Statement Charges | Taxable, except for Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY). |
| 13. | Issuance of Letter of Credit | Exempt, as it is included in the definition of 'Money' under section 2(75) of CGST Act and hence, outside the definition of goods and services. |
| 14. | Ledger Folio Charges | Taxable |
| 15. | Loan takeover transactions | Taxable (GST will be charged on the processing fees charged for the takeover of the loan). |
| 16. | Processing Fees on Loans | Taxable |
| 17. | Promissory Notes | Not Chargeable [As it is covered in the definition of "money" (which is neither good nor service in GST) and hence exempt. However, if any extra amount is charged in the name of commission, fees, brokerage etc. then it will be chargeable]. |

Compliances of GST in Banking Sector

| | | |
|-----|---|--|
| 18. | Sale of Derivatives | Not Chargeable (Since derivatives fall within the definition of securities, which is neither good nor service in GST, hence they are not liable to GST). However, if any extra amount is charged in the name of commission, fees, brokerage etc. than it will be chargeable. |
| 18. | Sale of Derivatives | Not Chargeable (Since derivatives fall within the definition of securities, which is neither good nor service in GST, hence they are not liable to GST). However, if any extra amount is charged in the name of commission, fees, brokerage etc. than it will be chargeable. |
| 19. | Security receipt as defined in clause (zg) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act | Exempt, as covered under the definition of "securities", which is excluded from the definition of "Goods" and "Services". |
| 20. | Services provided to Reserve Bank of India | Interest charged on deposit kept with RBI is exempt. Other charges are taxable, as not exempt specifically. |
| 21. | Standing Instruction Charges | Taxable, except for Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY). |
| 22. | Stop Payment Charges | Taxable, except for Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY). |
| 23. | Services supplied by a recovery agent to a bank. | Taxable under RCM |

Incomes Earned by Banks

| | | |
|-----|---|--|
| 24. | Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank. | Taxable under RCM |
| 25. | Services provided by Business Facilitator/ Business Correspondent to a banking company in compliance with RBI's Circular No. DBOD.No.BL.BC.58/ 22.01.001/2005-2006 dated 25.01.2006 and subsequent instructions on the issue. | Exempt vide Entry no. 39 [Heading no. 9971] of Notification 12/2017 dt. 28.06.2017. |
| 26. | Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY). | Exempt under Notification No. 28/2018 dated 31 st December 2018. |
| 27. | Business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch | Exempt under Notification No. 12/2017 dt. 28.06.2017. |
| 28. | Any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in Entry 28. | Exempt by Notification 12/2017 dt. 28.06.2017. |
| 29. | Penal interest in case of delay payment of EMI. | Exempt as per clarification by Circular No. 102/21/2019- GST dated 28th June, 2019 |
| 30. | Foreclosure charges for foreclosure of loan to compensate for the loss in | As per the clarification issued by Department vide Circular no. 10 of 2022 dated 3 rd August 2022, GST is |

Compliances of GST in Banking Sector

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|-----|--|--|
| | interest income | leviable on Foreclosure charges / Prepayment charges levied by bank. Details of text is in Point no. 7.1.6 of the said circular. |
| 31. | Cheque dishonour fine / penalty | As per Circular No. 178/10/2022-GST, cheque dishonour fine or penalty is not a consideration for any service and not taxable. |
| 32. | Incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions | As per Circular No .190/02/2023-GST dated 13th January 2023, Incentives paid for promotion of Rupay Debit cards and low value BHIM UPI transactions are in the nature of subsidy and thus not taxable. |

Chapter 3

Expenses Incurred by Banks

Generally, obligation to discharge GST lies on the supplier of supply. But there exist certain cases on which Reverse charge is applicable. Various expenses incurred by the banks are exigible to tax under Reverse Charge Mechanism (“RCM”).

Under RCM, the duty to discharge tax is cast on recipient of supply. RCM under GST depends on the nature of supply and/or nature of supplier. All taxpayers required to pay tax under reverse charge must mandatorily obtain registration and the threshold exemption is not applicable to them. Payment of taxes under Reverse Charge cannot be made with utilisation of ITC and must be made in Cash. Unlike, service tax where both full and partial reverse charge exists, in GST only full reverse charge subsists.

Section 9(3) of the CGST Act/ Section 5(3) of the IGST Act specify categories of supply of goods or services or both as notified by Government on recommendations of the Council on which RCM is applicable. In this regard, Government *vide Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017 (“NN 13/2017-CTR”) / Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 (“NN 10/2017-ITR”)* as amended from time to time specify the category of services on which RCM is applicable.

The list of such services where reverse charge mechanism under NN 13/2017-Central Tax (Rate) is applicable and are relevant for banking sector is as under:

| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|---------|--|------------------------------|--|
| (1) | (2) | (3) | (4) |
| 1. | Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road to- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or | Goods Transport Agency (GTA) | (a) Any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or |

Compliances of GST in Banking Sector

| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|---------|--|---------------------|---|
| (1) | (2) | (3) | (4) |
| | <p>(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person. [Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, -</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies,</p> | | <p>(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> |

Expenses Incurred by Banks

| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|---------|--|---|--|
| (1) | (2) | (3) | (4) |
| | <p>which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.]³</p> <p>Provided further that nothing contained in this entry shall apply where, -</p> <p>i. the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and</p> <p>ii. the supplier has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a declaration as prescribed in Annexure III on such invoice issued by him.</p> | | <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person; located in the taxable territory.</p> |
| 2. | ⁴ [Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly. | An individual advocate including a senior advocate or firm of | Any business entity located in the taxable territory. |

³ Proviso was inserted w.e.f. 01-01-2019 vide Notification No. 29/2018-Central Tax (Rate), dated 31-12-2018.

⁴ Column (2) against Sl. No. 2 was corrected vide Corrigendum dated 25-09-2017 issued in F. No. 336/20/2017-TRU. Before correction, it read as -

"Services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity."

Compliances of GST in Banking Sector

| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|---------|--|--|--|
| (1) | (2) | (3) | (4) |
| | Explanation. - "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.] | advocates. | |
| 3. | Services supplied by an arbitral tribunal to a business entity. | An arbitral tribunal. | Any business entity located in the taxable territory. |
| 4. | Services provided by way of sponsorship to any body corporate or partnership firm. | Any person | Any body corporate or partnership firm located in the taxable territory. |
| 5. | Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts and the Ministry of Railways (Indian Railways); (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers. | Central Government, State Government, Union territory or local authority | Any business entity located in the taxable territory. |
| [5A . | Services supplied by the Central Government excluding the Ministry of Railways (Indian Railways), State Government, Union territory or local authority | Central Government, State Government, Union territory | Any person registered under the Central Goods and Services Tax Act, |

Expenses Incurred by Banks

| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|---------|---|--|--|
| (1) | (2) | (3) | (4) |
| | by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017). | or local authority | 2017.] ⁵ |
| 5B. | Service by way of renting of residential dwelling to a registered person. | Any person | Any registered person |
| 6. | Services supplied by a director of a company or a body corporate to the said company or the body corporate. | A director of a company or a body corporate | The company or a body corporate located in the taxable territory. |
| 7. | Services supplied by an insurance agent to any person carrying on insurance business. | An insurance agent | Any person carrying on insurance business, located in the taxable territory. |
| 8. | Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company. | A recovery agent | A banking company or a financial institution or a non-banking financial company, located in the taxable territory. |
| 9. | Supply of services by the members of Overseeing Committee to Reserve Bank of India | Members of Overseeing Committee constituted by the Reserve Bank of India | Reserve Bank of India.] ⁶ |
| 10. | Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non- | Individual Direct Selling Agents (DSAs) other than a body corporate, | A banking company or a non-banking financial company, located in the |

⁵ Sl.No. 5A was inserted w.e.f. 25-01-2018 vide Notification No. 3/2018-Central Tax (Rate), dated 25-01-2018.

⁶ Sl.No. 10 was inserted w.e.f. 13-10-2017 vide Notification No. 33/2017-Central Tax (Rate), dated 13-10-2017.

Compliances of GST in Banking Sector

| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|---------|--|--|--|
| (1) | (2) | (3) | (4) |
| | banking financial company (NBFCs). | partnership or limited liability partnership firm. | taxable territory.] ⁷ |
| 11. | Services provided by business facilitator (BF) to a banking company | Business facilitator (BF) | A banking company, located in the taxable territory |
| 12. | Services provided by an agent of business correspondent (BC) to business correspondent (BC). | An agent of business correspondent (BC) | A business correspondent, located in the taxable territory. |
| 13. | Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to, - (i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable | Any person other than a body corporate | A registered person, located in the taxable territory.] ⁸ |

⁷ Sl.No. 11 was inserted w.e.f. 27-07-2018 vide Notification No. 15/2018-Central Tax (Rate), dated 26-07-2018.

⁸ Sl.Nos. 12, 13 and 14 the entries relating thereto were inserted w.e.f. 01-01-2019 vide Notification No. 29/2018-Central Tax (Rate), dt. 31-12-2018.

Expenses Incurred by Banks

| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|----------------|---|---|--|
| (1) | (2) | (3) | (4) |
| | supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act. | | |
| 14. | Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate. | Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6% to the service recipient. | Any body corporate located in the taxable territory. ⁹ |
| 15. | Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended. | Lender i.e. a person who deposits the securities registered in his name or in the name of any other person | Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of |

⁹Sl. No. 15 was inserted w.e.f. 1-10-2019 vide Notification No 22/2019-Central Tax (Rate) dated 30-09-2019, then amended w.e.f. 31-12-2019 vide Notification No - 29/2019-Central Tax (Rate) dated 31-12-2019. Prior to this substitution it read as under:

| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|----------------|--|--|--|
| 15. | Services provided by way of renting of a motor vehicle provided to a body corporate. | Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business | Any body corporate located in the taxable territory. |

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| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|---------|--------------------------------|---|----------------------|
| (1) | (2) | (3) | (4) |
| | | duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI | SEBI.] ¹⁰ |

In addition to the above list given under Central Tax- Rate, following additional category of supply of services is listed under *NN 10/2017-Integrated Tax (Rate)* on which GST shall be paid by the recipient on reverse charge basis: -

| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|---------|--|---|--|
| (1) | (2) | (3) | (4) |
| 1. | Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient | Any person located in a non-taxable territory | Any person located in the taxable territory other than non-taxable online recipient. |

Some of the services which are relevant with respect to the Banking sector are explained in detail below:

Services provided by recovery agent

Generally, loans are the areas wherein the banks earn major portion of their income. It is the most organized form of extending credit to customers and interest income is earned in respect of such credits extended. Majority of banks spend great time and effort in recovering credits so granted.

Further, many banks sell their loans to third parties or hire third party agents to initiate recovery on their behalf.

Loans sold to factoring agents are not liable for payment of GST. Please examine that these transactions would be 'exempt supply' depending on whether these are with or without recourse.

¹⁰ Sl.No. 15 and 16 was inserted w.e.f. 01-10-2019 vide Notification No. 22/2019-Central Tax (Rate), dated 30-09-2019.

Third parties are hired to initiate recovery on behalf of the banks which is purely a service transaction and liable to payment of GST. RCM is applicable on such transactions and therefore the banks who hire such third-party agents are liable for payment of GST on the fees so paid to these recovery agents/third party agents. Banks also provide infrastructure, phone facilities and such other benefits to these third-party agents in order to perform their services. Even such value is required to be taken into consideration while determining the value of supply for the purpose of payment of GST.

As an auditor, one should check the agreements between the bank and the recovery agent. Under GST regime, the bank should raise a self-invoice and thereafter appropriate GST @ 18% should be paid on the same. The income so earned should be disclosed in the relevant chapter heading as classified under the GST regime.

Services provided by insurance agent

If the banks are also engaged in the business of insurance, then the services provided by such insurance agent who sell insurance products of the banks is liable for payment of GST. Further, the amount on which tax is payable is the commission paid to the insurance agent. Such commission also includes reimbursement by any mode.

The insurance division of the banks receiving the services from those insurance agents are liable for payment of GST under RCM.

As an auditor, one should check the agreements between the bank and the insurance agent. Under GST regime, the bank should raise a self-invoice and thereafter appropriate GST @ 18% should be paid on the same. The income so earned should be disclosed in the relevant chapter heading as classified under the GST regime.

Services provided by Goods Transport Agency (GTA)

W.e.f. July 1,2017 *vide Entry No.1 of NN 13/2017-CT(R)*, if any services in respect of transportation of goods by road are provided by GTA to the following recipient located in the taxable territory, then recipient of service is liable to pay tax under reverse charge:

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
or

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- (c) any co-operative society established by or under any law; or
- (d) any person registered under the CGST Act or the IGST Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons; or
- (g) any casual taxable person.

The updated criteria for taxability of GTA services can be referred in the table above for RCM related supplies. Therefore, auditor has to check that correct ITC is taken, and appropriate person has discharged the tax. Carriage of Goods by Road Act, 2007 requires that no motor vehicle undertake transport of goods by road except with a proper registration of such motor vehicle. And every consignment be accompanied by a forward note or receiving note. Merely because goods are not of substantial value or not involving supply or involving inter-branch movement, it is not appropriate to avoid issuing such a 'note'. Under GST, GTA is one who issues a consignment note 'by whatever name called'.

Services provided by Advocates

W.e.f July 1, 2017 In terms of *entry no. 2 of vide NN 13/2017-CTR*, RCM was applicable on services supplied by an individual advocate including a senior advocate by way of representational services before any Court, Tribunal or Authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.

Thereafter a *Corrigendum to Notification No. 13/2017* was issued [M.F. (D.R.) *Corrigendum F. No. 336/20/2017-TRU, dated 25-9-2017*], thereby RCM is applicable on services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.

Where - "*legal service*" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

Usually, legal services are availed by banks 'on account of' their customers. Here, auditors ensure that banks do not withhold themselves from payment of

RCM on legal fee paid on the premise that these services are availed 'on account of' their customers, especially when the legal fee is debited to customer's account. It is more appropriate that banks discharge RCM as fee from advocate will be issued to bank. Very often, it is observed that where expenses are incurred but debited to customer's account, RCM liability thereon, is somehow omitted. Customer's being unaware of the various components of costs that are embedded in the amounts debited to the account, RCM liability cannot possibly be discharged by them. Hence, banks may be advised to suitably ensure RCM is complied with.

Service provided by way of import of services

Many banks do spend a lot of funds on procuring services from abroad. Where the supply of goods or services or both are taxable in nature, GST is payable by the recipient bank. Some important areas are summarised as under:

1. Bond floating expenditure

Generally, bond floating expenditure is an expenditure which though appropriately recorded in the books of accounts, skips the attention and the applicable taxes are not discharged often in respect of the same. Therefore, the concerned auditor should thoroughly inspect the books of accounts and identify all payments in foreign currency for compliance with these provisions.

For e.g.: IVY Bank wants to issue bonds in NYSE and for the said purpose has appointed WYE bank, a leading bank in America for floating the said bonds and acting as a lead merchant banker. The fee for the same is generally some fixed percentage of the ticket size which is recorded appropriately in the books of accounts. The instant transaction is taxable in terms of section 13 (2) of the IGST Act.

Under the GST regime, the same requires thorough analysis of the transaction, as these are generally taxable as per section 13 of the IGST Act. However, the actual answer may vary depending upon the structuring of the transaction.

2. Underwriting charges

If underwriting charges are paid in foreign currency to an underwriter who is located outside India, then GST is payable on such transactions. Appropriate ledgers, contracts etc. should be scrutinised in detail and thereafter relevant disclosures should be made regarding taxability of the same.

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3. IT infrastructure cost

Generally, IT infrastructure is a common cost which the banks bear on all-India basis and execute one common contract for the same. Though, such cost requires careful apportionment in terms of appropriate provisions including rules and depending upon the nature of the transaction appropriate GST (generally @ 18%) is payable on such transaction. Further, credit for the GST so paid is available.

In RCM, the auditor must check the nature and description of supplies received by the concerned branch/head office.

Chapter 4

Input Tax Credit

Under the GST regime, a banking company or a financial institution including a non-banking financial company engaged in supplying services by way of accepting deposits, extending loans or advances shall have following two options to avail ITC in terms of section 17(4) of the CGST Act. The option once exercised shall not be withdrawn during the remaining part of the financial year.

OPTION I

Reverse the credit pertaining to exempted services as per the method stated in section 17(2) of the CGST Act read with the relevant State Act and Rules thereof.

OR

OPTION II

Avail 50% of the eligible ITC on inputs, capital goods and input services in that month and the rest shall lapse. And accordingly follow the following procedure in accordance with rule 38 of the CGST Rules:

1. Such banking company or financial institution shall not avail credit of:
 - the tax paid on inputs and input services that are used for non-business purposes, and
 - the credit attributable to the supplies specified in section 17(5)
2. Further, the condition of 50% restriction would not be applicable in case of the tax paid on supplies made by one registered person to another registered person having the same PAN. Hence, banking company or financial institution shall avail the credit of tax paid on inputs and input services in case of supplies made to its own branches i.e., transactions involving internally generated services under same PAN.
3. 50% of the remaining amount of input tax shall be admissible and shall be the input tax credit admissible to the company or the institution and the balance amount of input tax credit shall be reversed in FORM GSTR-3B.

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4. The amount referred in point 2. and 3 above shall subject to the provisions of Section 41, 42 and 43, be credited to the electronic credit ledger of the said banking company or financial institution.

Clarification on reversal of credits for banks and financial institutions including NBFCs

Relevant provisions have been amended to exclude banks and financial institutions including NBFCs engaged in providing services by way of extending deposits, loans or advances from its ambit. It has been provided in the said explanation that value for reversal of common ITC taken on inputs and input services used in providing taxable and exempted services, shall not include the value of services by way of extending deposits, loans or advances against consideration in the form of interest or discount.

Apportionment of credit

Section 17(2) of the CGST Act stipulates that, where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Credit attributable to exempt supplies is not available to a registered person. 'Exempt Supplies' for this purpose mean all supplies other than taxable and zero-rated supplies and specifically include the following:

- Supplies liable to tax under RCM;
- Transactions in securities;
- Sale of land; and
- Subject to Para 5(b) of Schedule II, sale of building.

The "*value of exempt supply*" shall not include the value of activities or transactions specified in schedule III, except those specified in paragraph 5 of the said Schedule and the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.

Hence, they will not entail any reversal of credit. Further, Schedule III of the CGST Act provides that following activities or transactions shall neither be treated as a supply of goods nor a supply of services:

“7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8.(a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption”.

The expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962.

From the above, it can be gathered that excluding of supplies covered under Schedule III has resulted in lower reversal of credit particularly in case of high sea sales and merchant trade transactions.

Rule 42 of the CGST Rules: Manner of determination of ITC in respect of inputs or input services and reversal thereof via illustration

| Sl. No | Particulars | Reference | CGST | SGST/UTGST | IGST |
|--------|--|----------------|---------------|---------------|---------------|
| 1. | Total input tax on inputs and input services for the tax period May 2023 | T | 1,00,000 | 1,00,000 | 50,000 |
| | Out of the total input tax (T): | | | | |
| 2. | Input tax used exclusively for non-business purposes (Note 1) | T ₁ | 10,000 | 10,000 | 5,000 |
| 3. | Input tax used exclusively for effecting exempt supplies (Note 1) | T ₂ | 10,000 | 10,000 | 5,000 |
| 4. | Input tax ineligible under Section 17(5) (Note 1) | T ₃ | 5,000 | 5,000 | 2,500 |
| | Total | | 25,000 | 25,000 | 12,500 |

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| Sl. No | Particulars | Reference | CGST | SGST/UTGST | IGST |
|--------|--|-------------------------------|-------------|-------------|-------------|
| | ITC credited to Electronic Credit Ledger (Note 1) | $C_1 = T - (T_1 + T_2 + T_3)$ | 75,000 | 75,000 | 37,500 |
| | Input tax credit used exclusively for taxable supplies (including zero-rated supplies) | T_4 | 50,000 | 50,000 | 25,000 |
| | Common credit | $C_2 = C_1 - T_4$ | 25,000 | 25,000 | 12,500 |
| | Aggregate value of exempt supplies for the tax period May 2023 (Note 2 & 3) | E | 25,00,000 | 25,00,000 | 25,00,000 |
| | Total Turnover of the registered person for the tax period May 2023 (Note 2) | F | 1,00,00,000 | 1,00,00,000 | 1,00,00,000 |
| | Credit attributable to exempt supplies | $D_1 = (E/F) * C_2$ | 6,250 | 6,250 | 3,125 |
| | Credit attributable to non-business purposes | $D_2 = C_2 * 5\%$ | 1,250 | 1,250 | 625 |
| | Net eligible common credit | $C_3 = C_2 - (D_1 + D_2)$ | 17,500 | 17,500 | 8,750 |
| | Total credit eligible (Exclusive + Common) | $G = T_4 + C_3$ | 67,500 | 67,500 | 33,750 |

Note 1: T_1 , T_2 , T_3 and T_4 shall be DETERMINED AS ABOVE and declared by the registered person at summary level in **FORM GSTR-3B**.

Note 2: If the registered person does not have any turnover for May 2018, then the value of Exempt Supplies (E) and Total Turnover (F) shall be considered for the last tax period for which such details are available.

Note 3: Aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

Note 4: Amount of 'C₃', 'D₁' and 'D₂' shall be computed separately for ITC of CGST, SGST, UTGST and IGST declared in **FORM GSTR-3B** or through **FORM GST DRC-03**.

And the amount equal to aggregate of 'D₁' and 'D₂' shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03**.

Note 5: The registered person is expected to make such computation for each tax period and reverse the same in the periodic returns being filed by such registered person. However, on completion of the financial year, ITC shall be determined accurately based on actuals, in the same manner as provided in rule 42. A reconciliation is required to be done on an annual basis (between the amounts reversed for each tax period during the year and the amount determined at the end of the financial year) and any excess credit availed needs to be reversed with interest while short credit, if any, needs to be re-availed within 6 months from end of the financial year.

It is to be noted that the registered person would be required to remit excess ITC claimed (as determined in Note 7 above) with interest calculated for the period starting from the first day of April of the succeeding financial year till the date of payment. However, no interest can be claimed if, at the end of the financial year, it is found that short credit was availed.

Therefore, an auditor can check whether, Designated/ Nodal branch is reversing the ITC in compliance to the above Rule. If ITC is not reversed in compliance to the above Rules, it shall be treated as ITC wrongly taken and the same will be recovered along with the interest under Section 50 of the CGST Act.

Please note that, ITC by a Registered Taxable Person can only be availed subject to the fulfilment of following conditions:

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Basis – tax invoice/debit note issued by a registered person supplier, or other prescribed taxpaying document

Goods and/or services or both have been received*

Goods deemed to be received by a taxable person when the supplier delivers the goods to the recipient/ any other person, on the direction provided by the taxable person to the supplier.

Exception in case of goods being directly sent to job worker

Services provided by supplier to any person on the direction of and on account of such registered person

Details of ITC in respect of said supply communicated to such registered person u/s 38 has not been restricted

Tax actually paid by the supplier to the credit of the appropriate Government either in cash or by utilization of ITC

Monthly return in Form GSTR-3B u/s 39 is furnished

Credit only upon receipt of the last lot instalment in case of goods received in lots / instalments

If the recipient of services fails to pay (value + tax) within 180 days from date of invoice. (ITC availed + interest @ 18%) shall be added to his output tax liability. ITC available when amount discharged later.

Documents required for availing credit are:

| | | |
|--|--|---|
| Invoice issued by a supplier of goods or services or both as per S-31 | Invoice issued as per S-31(2)(f) by recipient along with proof of payment of tax | A debit note issued by supplier u/s 34. |
| Bill of entry or similar document prescribed under the Customs Act, 1962 | Revised invoice | Document issued by Input Service Distributor ("ISD"). |

| No ITC allowed to be availed |
|---|
| <ul style="list-style-type: none"> ▪ Beyond 30th November of the following FY to which invoice pertains or date of filing of annual return, whichever is earlier. |

No ITC can be availed in terms of section 17(5) of the CGST Act – No ITC shall be available in respect of the following namely:

- (a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely: —
 - (A) further supply of such motor vehicles; or
 - (B) transportation of passengers; or
 - (C) imparting training on driving such motor vehicles;
- (aa) vessels and aircraft except when they are used—
 - (i) for making the following taxable supplies, namely: —
 - (A) further supply of such vessels or aircraft; or
 - (B) transportation of passengers; or
 - (C) imparting training on navigating such vessels; or
 - (D) imparting training on flying such aircraft;
 - (ii) for transportation of goods;
- (ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the ITC in respect of such services shall be available—

 - (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;
 - (ii) where received by a taxable person engaged—
 - (I) in the manufacture of such motor vehicles, vessels or aircraft; or
 - (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;
- (b) the following supply of goods or services or both—
 - (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of

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motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the ITC in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (ii) membership of a club, health and fitness centre; and
- (iii) travel benefits extended to employees on vacation such as leave or home travel concession.

Provided that the ITC in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force.]¹¹

¹¹Substituted vide the CGST (Amendment) Act, 2018 w.e.f.1-02-2019 & earlier it was:

- (a) motor vehicles and other conveyances except when they are used—
 - (i) for making the following taxable supplies, namely: —
 - (A) further supply of such vehicles or conveyances; or
 - (B) transportation of passengers; or
 - (C) imparting training on driving, flying, navigating such vehicles or conveyances;
 - (ii) for transportation of goods;
- (b) the following supply of goods or services or both—
 - (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;
 - (ii) membership of a club, health and fitness centre;
 - (iii) rent-a-cab, life insurance and health insurance except where—
 - (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
 - (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and
 - (iv) travel benefits extended to employees on vacation such as leave or home travel concession;

- (c) works contract services when supplied for construction of immovable property, (other than plant and machinery), except where it is an input service for further supply of works contract service;
- (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account, including when such goods or services or both are used in the course or furtherance of business;

Explanation. - For the purpose of clause (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

- (e) goods or services or both on which tax has been paid under section 10;
- (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
- (fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013)
- (g) goods or services or both used for personal consumption;
- (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
- (i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

Explanation. - For the purposes of Chapter V and Chapter VI of the CGST Act, the expression 'plant and machinery' means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes:

- (i) land, building or any other civil structures,
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises

Credit utilization [Sec 49(5)]

- (a) integrated tax shall first be utilised towards payment of integrated tax and

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the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

- (b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
- (c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

- (d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

- (e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and
- (f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

With effect from 1-02-2019, *vide the CGST (Amendment) Act 2018* read with *Notification No. 02/2019-Central Tax, dated 29-01-2019*, sections 49A and 49B have been inserted.

Section 49A of the CGST Act provides for manner of ITC utilisation, wherein, the credit of IGST has to be utilised first and only after which, credits of CGST and SGST/UTGST can be utilized.

“49A. Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.”

The full utilization of IGST credit by taxpayer facilitates the Government in the following:

- (a) Reduction of transactions of inter -settlement between the Centre & States.
- (b) Self-utilization of IGST deposited in Consolidated Fund of India through payment route of taxpayer instead of post return calculation .

However, it may lead to a situation wherein taxpayer has to pay SGST in cash while his balance in CGST Credit ledger still lying.

Illustration:

| Nature of Tax | Tax liability | ITC available |
|---------------|---------------|---------------|
| IGST | 100(ip) | 200 (ic) |
| CGST | 100 (cp) | 50 (cc) |
| SGST | 100 (sp) | 50 (sc) |

| As per Old provision | | | | As per New provisions | | |
|----------------------|---------------|--------------------|------------------------------------|-----------------------|-------------------|-------------|
| | Tax liability | Paid through ITC | Paid through Cash / Balance Credit | Paid through ITC | Paid through Cash | Balance ITC |
| IGST | 100 (ip) | 100 (ic) | Nil | 100 (ic) | - | - |
| CGST | 100 (cp) | 50 (ic) 50 (cc) | Nil | 100 (ic) | - | 50 (cc) |
| SGST | 100 (sp) | 50 (ic) 50 (sc) | Nil | 50 (sc) | 50 | - |

Further, section 49B of the CGST Act stipulates that notwithstanding anything contained in ITC Chapter V of the CGST Act and subject to section 49(5)(e) and (f) of the CGST, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the ITC on account of IGST, CGST, SGST or UTGST, as the case may be, towards payment of any such tax.

In this regard, w.e.f. 29-03-2019 *vide Notification No. 16/2019 – Central Tax dated 29.03.2019*, rule 88A of the CGST Rules has been inserted which provides order of utilization of ITC.as:

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*“Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax **and** State tax or Union territory tax, as the case may be, in any order:*

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.”

Therefore,

| Credit of: | Liability of ↓ | | |
|-------------|----------------|-------|--------------|
| | IGST | CGST | SGST / UTGST |
| IGST | ✓ (1) | ✓ (1) | ✓ (1) |
| CGST | ✓ (2) | ✓ (2) | |
| SGST /UTGST | ✓ (3) | | ✓ (2) |

*The numbers represent the order of utilization of credit

From above two set of opinion can be drawn:

1. Available ITC of account of IGST will first be utilised for payment of IGST, then CGST/SGST and then for SGST/CGST or vice versa
2. Available ITC of account of IGST will first be utilised for payment of IGST and then for payment of CGST and SGST (in any proportion).

E.g.,

| | ITC available | Liability | ITC Utilization OPTION-I | | ITC Utilization OPTION-II |
|-------------|---------------|-----------|---|---|---|
| IGST | ₹ 2000 | ₹ 1200 | IGST- ₹ 1200 | IGST- ₹ 1200 | IGST- ₹ 1200 |
| CGST | ₹ 500 | ₹ 1800 | IGST- ₹ 800 CGST- ₹ 500 Cash- ₹ 500 | IGST- ₹ 0 CGST- ₹ 500 Cash- ₹ 1300 | IGST- ₹ 400 CGST- ₹ 500 Cash- ₹ 900 |
| SGST | ₹ 300 | ₹ 1800 | IGST- ₹ 0 SGST- ₹ 300 Cash- ₹ 1,500 | IGST- ₹ 800 SGST- ₹ 300 Cash- ₹ 700 | IGST- ₹ 400 SGST- ₹ 300 Cash- ₹ 1,100 |

However, the CBIC vide Circular No. 98/17/2019-GST, dated 23.04.2019 clarified that after the insertion of rule 88A, the order of utilization of input tax credit will be in any order and in any proportion. The same has been given below:

| ITC on account of | Output liability on account of | | |
|--|--------------------------------|---|---------------|
| | IGST | CGST | SGST/UTGST |
| IGST | (I) | (II) - In any order and in any proportion | |
| (III) ITC on account of IGST to be completely exhausted mandatorily | | | |
| CGST | (V) | (IV) | Not permitted |
| SGST/UTGST | (VII) | Not permitted | (VI) |

For e.g., - Amount of ITC available and output liability under different tax heads

| Head | Output Liability | Input tax Credit |
|--------------|------------------|------------------|
| IGST | 1000 | 1300 |
| CGST | 300 | 200 |
| SGST/UTGST | 300 | 200 |
| Total | 1600 | 1700 |

Option 1:

| ITC on account of | Discharge of output liability on account of | | | Balance of ITC |
|---|---|------------|------------|----------------|
| | IGST | CGST | SGST/UTGST | |
| IGST | 1000 | 200 | 100 | 0 |
| ITC on account of IGST has been completely exhausted | | | | |
| CGST | 0 | 100 | - | 100 |
| SGST/UTGST | 0 | - | 200 | 0 |
| Total | 1000 | 300 | 300 | 100 |

Option 2:

| ITC on account of | Discharge of output liability on account of | | | Balance of ITC |
|---|---|------------|------------|----------------|
| | IGST | CGST | SGST/UTGST | |
| IGST | 1000 | 100 | 200 | 0 |
| ITC on account of IGST has been completely exhausted | | | | |
| CGST | 0 | 200 | - | 0 |
| SGST/UTGST | 0 | - | 100 | 100 |
| Total | 1000 | 300 | 300 | 100 |

Chapter 5

Routine Procedural Checks under GST Regime

Payment dates

In case of bank, GST should be remitted by 20th of the next month.

FORM GST PMT-6 Challan for deposit of GST — valid for 15 days from the date of generation of challan.

Further, interest under section 50, to be paid in case of failure to pay tax or part thereof to the Government within period prescribed and in case of excess claim of ITC or excess reduction in output tax liability is 18%.

Time limitation for issuance of invoice

Where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, invoice shall be issued before or after the provision of service, but within 45 days from the date of supply of services.

Further, an insurer or a banking company or a financial institution, including a NBFC, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

A. Information to be contained in Tax Invoice

In terms of rule 46 of the CGST Rules, a tax invoice referred to in section 31 of the CGST Act, shall be issued by the registered person containing the prescribed information but not limited to the following: -

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number, not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters' hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;

Routine Procedural Checks under GST Regime

- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;
- (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than ₹ 50,000/- and the recipient requests that such details be recorded in the tax invoice;
- (g) Harmonised System of Nomenclature code for goods or services;
[As regards the requirement to quote the HSN of the supplies, the annual turnover of the registered person for the previous year shall be referred. In case of suppliers having annual turnover in the previous year: –
 - i. Upto ₹ 5 Crore – HSN upto 4 digits required
 - ii. Exceeding ₹ 5 Crore – HSN upto 6 digits required]
- (h) description of goods or services;
- (i) quantity in case of goods and unit or Unique Quantity Code thereof;
- (j) total value of supply of goods or services or both;
- (k) taxable value of supply of goods or services or both considering discount or abatement, if any;
- (l) rate of tax (central tax (CGST), State tax (SGST), integrated tax (IGST), Union territory tax (UTGST) or cess);
- (m) amount of tax charged in respect of taxable goods or services (CGST, SGST, IGST, UTGST or cess);
- (n) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;
- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and
- (q) signature or digital signature of the supplier or his authorized representative;

B. Tax Invoices in cases of special services

Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company, the said supplier may issue a consolidated tax invoice or any other document in lieu thereof, by whatever name called for the supply of services made during a month, at the end of the month, whether issued or made available, physically or electronically whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as mentioned under rule 46.

Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000.

C. In case of export of goods or services, the invoice shall carry an Endorsement

Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations, the invoice shall carry an endorsement as follows:

1. Where the supply is effected on payment of IGST: "*Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations on payment of integrated tax*" or
2. Where the supply is effected without payment of IGST: "*Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations under bond or letter of undertaking without payment of integrated tax*".

Further, for the details of invoice rule 46 will apply and, in lieu of the details specified in *clause (e) cited supra*, contain the following details:

- (i) name and address of the recipient;
- (ii) address of delivery; and
- (iii) name of the country of destination.

D. Supplies not exceeding ₹ 200/-

A registered person is not required to issue a tax invoice in accordance section 31(3)(b) of the CGST Act i.e. in respect of supply of goods or services or both where the value therein does not exceed a sum of ₹ 200/- subject to the following conditions, namely: -

Routine Procedural Checks under GST Regime

- (a) the recipient is not a registered person; and
- (b) the recipient does not require such invoice,

However, in respect of such supplies, the supplier shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

Therefore, Banking companies

- ✓ may issue tax invoice or any other document, whether serially numbered or not and issue an invoice even without containing the address of the recipient of service but contains the other information as provided by rule 46 of the CGST Rules.
- ✓ have the option to issue a consolidated tax invoice or any other document in lieu of tax invoice for the supply of services made during a month, at the end of the month, either in physical form or electronically.

NOTE

- A registered person supplying exempted goods or service or both or paying tax under section 10 shall issue Bill of supply. However, registered person may not Bill of supply if such supply is less than ₹ 200 /-
- A registered person shall on receipt of advance payment with respect to any supply shall issue Receipt voucher.
- Further, where at the time of receipt of advance,
 - the rate of tax is not determinable; the tax shall be paid at the rate of 18%
 - the nature of supply is not determinable, the same shall be treated as inter-State supply.
- Where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;
- A registered person who is liable to pay tax under section 9(3) or (4) shall issue a payment voucher at the time of making payment to the supplier.
- Notwithstanding anything contained in rule 46 or rule 49 or rule 54, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single “**invoice-cum-bill of supply**” may be issued for all such supplies.

Compliances of GST in Banking Sector

Returns

Every registered banking and/or financial institution including non-banking financial company is liable to file Forms GSTR-3B, GSTR-1, GSTR-6, GSTR 9 and GSTR-9C.

| FOR M | PARTICULARS | DUE DATE | APPLICABLE TO |
|---------|---|---|--|
| GSTR-3B | Monthly summary return or quarterly in case of QRMP Scheme. | 20 th of next month QRMP - 20 th / 22 nd of the month succeeding such quarter based on State. | All registered persons (other than Input Service Distributor (ISD), person liable to deduct TDS and personally liable to collect tax at source). |
| GSTR-1 | Outward Supplies > 5 Crores Outward Supplies < 5 Crores | 11 th of the next month 13 th of month succeeding the quarter (If QRMP Scheme opted) | Normal / Regular Taxpayer |
| IFF | Invoice furnishing Facility | 13 th of next month | Taxpayer opted for QRMP Scheme. |
| GSTR-6 | Monthly return by input service distributors | 13 th of the next month | Input Service Distributor |
| GSTR-9 | Annual return | 31 st December of the next Financial Year | Normal taxpayer Voluntary Filing of GSTR – 9 in case of Turnover not exceeds 2 Cr in the previous FY) |
| GSTR-9C | Annual return along with the copy of audited annual accounts and a reconciliation statement | 31 st December of the next financial year | Normal taxpayer having aggregate turnover of more than Rs. 5 crores |

(A) Obligation to furnish Information Return

Any person, being a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934, is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return (IR) of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.[Section150(1)(e) of the CGST Act]

Further, if the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in IR is defective, he may intimate the defect to the person who has furnished such IR and give him an opportunity of rectifying the defect within 30 days from the date of such communication of information or within such further period. If the defect is not rectified within the time prescribed, the IR should be treated as not submitted and penalty of Rs.100/- per day for each day during which the failure continues, would be payable subject to a maximum of ₹ 5,000 in terms of section 123 of the CGST Act.

Moreover, if no IR is filed, within the stipulated period, authority may serve a notice requiring him to furnish of such return within a period not exceeding 90 days from the date of service of the notice and such person shall furnish the IR.

Registration

Unlike the concept of Centralized registration available under erstwhile Service tax, under GST regime every supplier effecting taxable supplies, subject to a threshold limit need to take registration.

In terms of section 22 of the CGST Act, every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds ₹ 20 lakh and in case of special category state wherein the registration limit is ₹ 10 lakhs.

However, *vide the CGST, (Amendment) Act, 2018 - w.e.f. 1-02-2019*, second proviso to section 22(1) has been inserted to provide that Government may, at

Compliances of GST in Banking Sector

the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ₹ 10 lakhs to such amount, not exceeding ₹ 20 lakhs and subject to such conditions and limitations, as may be so notified. Further, the CGST, (Amendment) Act, 2018 also amend the expression special category States for the purpose of section 22. Special Category States shall mean the States as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution, except the State of Jammu and Kashmir and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand. Accordingly, threshold limit remains ₹ 20 lakhs for the States of Jammu and Kashmir, Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand w.e.f. 1-02-2019 and ₹ 10 lakhs for the States of Manipur, Mizoram, Nagaland and Tripura.

Therefore, now except 4 States, threshold limit for registration is ₹ 20 lakhs for rest all States.

Please note that the proviso to section 22(1) appearing in the CGST Act also appears in SGST Act(s). As a result, for a taxable person in a non-Special Category State, who has a branch in Special Category State, the threshold becomes ₹ 10 lacs and not ₹ 20 lacs.

Further, in case of a person engaged exclusively in supply of goods, as per the third proviso to section 22(1) inserted by *Finance (No. 2) Act, 2019* - w.e.f.1-01-2020, the Central Government may enhance the aggregate turnover from ₹ 20 lakh to ₹ 40 lakh, subject to certain conditions and restrictions as may be prescribed. Similar to the second proviso, this benefit is granted at the request of the State after the same is duly recommended by the GST Council.

Please note, this 'enhanced exemption threshold' will apply if the person is exclusively engaged in supply of "goods" and will NOT apply if "goods and services" both are supplied by such person.

From above it is important to understand the term aggregate turnover. Aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, export of goods or services or both and inter-State supplies of persons having the same PAN, to be computed on all India basis and excludes CGST/SGST, IGST, UTGST and cess.

For calculating the threshold limit, the turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all

his principals. Further, supply of goods by a registered job worker, after completion of job work, shall be treated as the supply of goods by the “principal” referred to in section 143 (i.e. Job work procedure) of this Act. The value of such goods shall not be included in the aggregate turnover of the registered job worker.

Now, it is important to mention that section 23 provides relaxation from the requirement of obtaining registration to two categories of persons:

- Agriculturist
- Persons engaged exclusively in the supply of exempted goods or services or both.

The term exclusive indicates engaging in only those supplies which are exempted. Therefore, if a supplier is supplying both exempted and non-exempted goods and/or services, then this provision is not applicable, and he is required to obtain registration under section 22.

Further, this section also permits any person whose ‘entire’ supply consists of ‘exempt supplies’, then such person is excluded from obtaining registration.

Notified persons may also be granted an exemption from registration.

Compulsory Registration under GST

Section 24 of the CGST Act provides the categories of persons who shall be required to register under this Act irrespective of the threshold. Two such categories of persons relevant for Banking sector are persons required to pay tax under reverse charge and ISD persons making any inter-State taxable supply; [Please Note *vide Notification 10/ 2017–Integrated Tax, dated 13.10.2017*, persons making inter-State supply of services and having turnover not exceeding ₹ 20 lakhs have been exempted under section 23 from obtaining registration. Accordingly, only persons who make inter-State supply of goods have to compulsorily obtain registration irrespective of the aggregate turnover.

However, the aggregate value of supply of services should not exceed ₹ 10 lakhs in respect of special category Special Category States except the States of Jammu and Kashmir, Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.

- (a) casual taxable persons making taxable supply;
- (b) persons who are required to pay tax under reverse charge;

Compliances of GST in Banking Sector

- (c) non-resident taxable persons making taxable supply;
- (d) persons who are required to pay tax under sub-section (5) of section 9
- (e) persons who are required to deduct tax under section 51 [Tax Deduction at Source];
- (f) person who are required to pay tax under section 9(5) [electronic commerce operator];
- (g) persons who supply goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (h) ISD;
- (i) persons who supply goods or services or both, other than supplies specified under section 9(5), through such electronic commerce operator who is required to collect tax at source under section 52;
- (j) every electronic commerce operator who is required to collect tax at source under section 52 ¹²;
- (k) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered;
- (l) every person supplying online money gaming from a place outside India to a person in India; and
- (m) Such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Further, the Central Government *vide Notification No. 11/2020 – Central Tax dated 21-03-2020 (NN 11/2020)* read with *Notification No. 39/2020 – Central Tax dated 5-05-2020 inter-alia* provide registration requirement in case of registered persons, who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016, undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), as the class of persons The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration in each of the States or Union territories where the corporate debtor was registered earlier, within 30

¹² *Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 - w.e.f. 01-02-2019.*

days of the appointment of the IRP/RP or by 30th June 2020, whichever is later. However, in cases where the IRP/RP has been appointed prior to NN 11/2020, he shall take registration within 30 days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

Moreover, the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under section 39 of the CGST Act for all the tax periods prior to the appointment of IRP/RP.

Effective date of Registration

Where the application for registration has been submitted within thirty days from the date on which the person becomes liable to registration, the effective date of registration shall be date on which he become liable for registration.

Where an application for registration has been submitted by the applicant after 30 days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration.

In case of suo-moto registration, i.e. registration pursuant to any survey, enquiry, inspection, search or any other proceedings, the effective date of registration shall be the date of order of registration.

Section 25 read with Rule 8 to 26 of the CGST Rules related to registration provides a detailed road map on the procedural aspects of the registration. The time limit for application is within 30 days (for persons other than casual taxable person or a non-resident taxable person) and casual taxable person or a non-resident taxable person shall have to obtain the registration at least 5 days prior to the commencement.

Concept of Input Service Distributor (ISD) under GST

Input Service Distributor (ISD) is an office of the supplier of goods or services or both where a document (like invoice) of services attributable to other locations are received (since they might be registered separately). Since the services relate to other locations, the corresponding credit should be transferred to such locations (having separate registrations) as services are supplied from there. Note that ISD cannot be an office that does any supply of its own but must be one that merely collects invoice for services and issues prescribed documents for its distribution.

ISD cannot normally be used in a situation where there is a liability to pay GST. It can only receive input tax credits on invoices related to input services and distribute such credits in the manner discussed below. An ISD cannot

Compliances of GST in Banking Sector

discharge tax liability under reverse charge. This would require obtaining another registration as a regular registered person and discharge RCM liability.

Section 20 read with rule 39 of the CGST Act deals with the manner and procedure of distribution of credit by ISD. ISD shall distribute the credit of CGST as CGST or IGST and IGST as IGST or CGST, by way of issue of a document containing, the amount of ITC credit being distributed in such manner as may be prescribed and subject to certain conditions. ISD may distribute the credit available for distribution in the same month in which it is availed. As per rule 39(1)(e) and (f) of the said rules, ISD shall distribute:

- ITC on account of CGST and SGST or UTGST
 - in respect of recipient located in the same State shall be distributed as CGST and SGST or UTGST respectively.
 - in respect of a recipient located in a State or Union Territory other than that of the ISD, be distributed as IGST.
- the amount to be so distributed shall be equal to the aggregate of the amount of ITC of CGST and SGST or UTGST that qualifies for distribution to such recipient in accordance with rule 39(1)(d).
- ITC on account of IGST shall be distributed as IGST.

The conditions to be adhered as prescribed in section 20 are:

- the credit can be distributed to recipients against a document containing such details as may be prescribed.

Where the ISD is an office of a banking company or a financial institution, including a nonbanking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the prescribed information.

The credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union Territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Amendments as per Finance Act, 2024

Finance Act, 2024 provides for amendments in the ISD related provisions in line with the GST Council recommendations. The amendments are yet to be notified.

Change in definition of Input Service Distributor (ISD)

The definition of ISD is being modified to mean an office of the supplier which receives tax invoices towards receipt of input services, including invoices for services which are liable to GST under the reverse charge mechanism under section 9(3) and 9(4) of the CGST Act, for or on behalf of distinct persons referred to in section 25.

Further, such definition also stipulates that the ISD is liable to distribute input tax credit in respect of such invoices, in the manner provided in section 20 of the CGST Act.

Further, section 20 has been substituted to make the ISD provisions mandatory. An office of the supplier of goods/services which receives tax invoices for input services including invoices for services liable to tax under reverse charge, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as an ISD under section 24 of the CGST Act. Such ISD shall distribute input tax credit in respect of such invoices to the recipient units and the mechanism for the same will be prescribed separately.

Chapter 6

Questionnaire for GST Audit of Banks

Name of the Branch:

GSTIN:

Particulars/information for the year

| PART A: BASIC DETAILS OF ASSESSEE | |
|---|--|
| 1. | Name of the Supplier/ Recipient of Supply |
| 2. | Full address: (Refer Appendix) of the Branch under audit and whether the same is principal place of business in the State. |
| 3. | Whether multiple GST registrations obtained in the State? List of all GST registration numbers (including ISD registration or other category of registration, if obtained) in the State with date of registration and nature of registration as Supplier/ Recipient of Supply? (Refer Appendix) |
| 4. | Validity Period of Registration (in case of casual person and NRI) |
| 5. | PAN of Assessee |
| 6. | List of principal revenue sources bifurcated into taxable, exempted and non-GST supplies. (Refer Appendix) |
| 7. | Is there any change in the activities stated above during the year as compared to immediately preceding year? Whether the same is included in registration? (Refer Appendix) |
| 8. | Whether taxpayer has maintained accounts and records in terms of Sections 35 -36 of the CGST Act read with Rules 56 to 58 of the CGST Rules. (Refer Appendix) |
| PART B: EXEMPTION AVAILABLE UNDER CGST/SGST/IGST | |
| 9. | Broad description of nature of income |
| 10. | Are services provided outside India? If yes, please specify nature of service and amount involved. (Refer Appendix) |

Questionnaire for GST Audit of Banks

| | |
|---|---|
| 11. | Broad description of exempted services provided, if any, and amount involved. (Refer Appendix) |
| 12. | Whether any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit such as locker rent, folio charges, loan processing fee, late payment fee, lease management fee, rent, management fee etc. are exigible to GST? (Refer Appendix) |
| 13. | Whether the Bank is trading in Commercial paper /Certificates of deposits? If yes, whether any separate charges are collected, and GST being paid on the same and provide details thereon. |
| 14. | Whether GST is levied on late fee charges collected from credit card holders? If yes, then whether GST is being paid on the same and give details thereof. (Refer Appendix) |
| 15. | Banking sector provides services of purchase and sale of foreign currency to its customers, which is exigible to tax under GST regime and the value of which can be ascertained in terms of rule 32(2) of the CGST Rules. However, inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers is exempt <i>vide</i> NN 12/2017-CT(R). Check whether transaction of purchase or sale of foreign currency is amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers? If no, then taxable. Check whether the value of supply of services in relation to the purchase or sale of foreign currency, including money changing is determined in terms of rule 32(2)? |
| 16. | Details of any repossessed goods and valuation criteria for arriving at purchase value of such goods. |
| PART C: COMPLIANCE UNDER GST ACT AND RULES, 2017 | |
| ❖ In respect of RCM | |
| 17. | REVERSE CHARGE- Broad description of Taxable Services received for which tax has to be paid under reverse charge. |

Compliances of GST in Banking Sector

| | |
|--------------------------------|---|
| 18. | <ul style="list-style-type: none"> • Whether payment requirement of GST under RCM [Section 9(3)/5(3) and 9(4)/5(4) of the CGST/IGST Act read with rules thereunder and notifications] have been complied? • Whether GST have been paid on advances paid by the banks to the specified registered persons under section 9(3) of the CGST Act such as sponsorship services, GTA services, etc.? • Whether in respect of each inward supply where no tax has been paid, is there is a clear disclosure made to the auditors as to the reasons for the tax position taken in each case? Auditor may examine, if the tax position taken requires to be reported in the audit report or other communication? • Whether the credit taken in respect of services covered under RCM is taken only after making payment of GST? |
| ❖ In respect of Payment | |
| 19. | <p>(a) Whether payment and ledger entries are made in terms of the CGST Act and payment rules given in the CGST Rules? [Refer Annexure B (for discharge of liability) and Time of supply provision in Chapter 1 (for determining point of taxation)]</p> <p>(b) If Tax is paid belatedly, specify interest paid on delayed payment under section 50 of the CGST Act?</p> <p>(c) Whether RCM tax liability is not discharged by utilizing the accumulated ITC?</p> |
| ❖ In respect of ITC | |
| 20. | <p>(a) Whether ITC taken/ utilized is matching with Books of accounts and GST returns. (Annexure A)</p> <p>(b) If the answer of (a) above is negative, Report differences thereof.</p> |
| 21. | Whether ITC credit taken, utilized and reversed on input services / inputs and Capital goods (Annexure C) is the CGST Act read with the CGST Rules? |
| 22. | <ul style="list-style-type: none"> • Whether the head office\branch has not availed depreciation under section 32 of the Income Tax Act, 1961 on the amount of GST on the capital goods on which ITC has been availed? • Whether the bank has taken the ITC in respect of input, capital goods and input services on the basis of proper tax paying documents, containing all particulars as prescribed by CGST Rules read with section 31 of the CGST Act, i.e., serially |

Questionnaire for GST Audit of Banks

| | |
|----------------------------|---|
| | numbered invoice / bill not exceeding 16 characters, containing the requisite information like, Name, address and GST Number of Bank, Name, address and GST No. of recipient, date of issue, HSN Code of goods, amount of the credit distributed etc.? |
| 23. | List of major input services /inputs on which the company takes ITC. Whether it complies with the CGST Act read with CGST Rules? |
| 24. | Whether credit has been reversed for every month an amount equal to 50% of the ITC availed on inputs, input services and capital goods or ITC has been reversed in respect of exempted supplies on actual basis? Note- such reversal is not required in case of internally generated services within the bank for which a tax invoice is issued to other branches i.e. distinct persons as per GST provisions. |
| 25. | Check whether credit of taxes paid under RCM is availed in the same month. If no, then ensure ITC is availed within the prescribed time as per the CGST Act read with rules made thereunder. |
| 26. | Whether any credit has been availed on invoice/ credit notes, after 30 th November of the subsequent financial year or furnishing of the relevant annual return, whichever is later? |
| 27. | Whether an amount equal to the ITC availed by the recipient added to output tax liability of supplier along with interest, where the recipient fails to pay supplier of goods or services an amount towards the value of supply along with tax payable within 180 days from the date of issue of invoice by the supplier? |
| 28. | Ensure branch/HO maintain details of ITC availed and/or utilized. (Refer Appendix) |
| ❖ In respect of ISD | |
| 29. | Month-wise amount of distribution of ITC, if the assessee is registered as an ISD together with address of the unit to which it is distributed. (Applicable to ISD unit). Amount of ITC received from ISD, if any, together with address of the unit from which it is received. (Applicable to recipient unit of ISD) (Refer Appendix) |
| 30. | Whether ITC distributed is in compliance to section 20 of the CGST |

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| | |
|---|--|
| | <p>Act read with rule 39 of the CGST Rules?</p> <p>If answer to above is negative, provide the discrepancy in the distribution and reasons thereof.</p> <p>(Refer Appendix)</p> |
| 31. | <p>Every ISD shall, for every calendar month or part thereof, furnish a return in FORM GSTR-6 electronically within the prescribed time period.</p> <p>(Refer Appendix)</p> |
| <p>❖ In respect of Value of Supply</p> | |
| 32. | <p>(i) Value of service provided to persons other than account holders where tax is not charged on the ground that the place of supply is outside the taxable territory. [S.12(12) of IGST Act]</p> <p>(ii) Value of services exported</p> <ul style="list-style-type: none"> • With payment of IGST and claimed refund • Without payment of IGST under the cover LUT or Bond and claimed refund |
| <p>❖ Export of Service</p> | |
| 33. | <p>Whether conditions for export of supply of service satisfied to avail benefit of export supply without payment of tax, such benefit is subject to furnishing of LUT/Bond?</p> <p>(Refer Appendix)</p> |
| 34. | <p>Is the payment for services exported received by the service provider in convertible foreign currency within the time limit prescribed by RBI? If not, give details.</p> |
| <p>PART G- OTHERS</p> | |
| 35. | <ul style="list-style-type: none"> • Treatment of transactions between head office, regional offices, zonal offices? • Whether the registered person have filed the applicable returns on timely basis as notified by the Government? • Whether IGST has been paid on 'import of services'? • Whether Tax wrongfully collected and paid to Central or State Government (inter-State supply considered as intra-State supply or vice versa)? <p>If Yes, State the details of transaction (quantum)</p> <p>[Annexure D]</p> |

Questionnaire for GST Audit of Banks

NOTE: Please also refer Frequently Asked Questions (FAQs) issued by CBIC on Banking, Insurance and Stock Brokers Sector updated as on 27.12.2018 which would assist the auditee in GST Audit.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/27122018-UPDATED_FAQs%20ON%20BANKING,%20INSURANCE%20AND%20STOCK%20BROKERS.pdf;jsessionid=1B50BE18BCC2EFE4C3B9DC77FE902
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NAME OF THE ASSESSEE

ANNEXURE A

RECONCILIATION OF TURNOVER FOR THE YEAR

| | | |
|---|---|------------|
| GSTR 1: RECON WITH BOOKS | | |
| | Total Credits in statement of profit and loss | XXX |
| | | |
| Less: | Not Goods / Not Services - e.g. Dividend Income | (XXX) |
| Less: | Sch III Items which is not a Supply e.g.: Land & Building etc. | (XXX) |
| Less: | Receipts not in the course of Business | (XXX) |
| Add: | Sch I Supplies like Branch Transfer not in books, but supply as per GST Law | XXX |
| Add: | Receipts capitalised but taxable under GST | XXX |
| Less: | Profit on Sale of Capital Goods | (XXX) |
| Add: | Taxable Value of Supply of Capital Goods | XXX |
| Add: | Advance received during the Current Period | XXX |
| Less: | Advance of earlier period adjusted during the Current period | (XXX) |
| Less: | Closing unbilled revenue recognised - But Time of Supply did not arise | (XXX) |
| Add: | Opening unbilled revenue (Billed during the period/Time of supply falls in the month) | XXX |
| | Total Value in Form GSTR 1 | XXX |
| Less: | Exempted Supply | (XXX) |
| Less: | Non-Taxable Supplies: Supplies Like HSD, Motor Spirit Etc. including Liquor | (XXX) |
| Less: | NIL Rated Supply | (XXX) |
| | Taxable Value in Form GSTR 1 | XXX |

NAME OF THE ASSESSEE

ANNEXURE B

Details of Discharge of Liabilities

| A | Month | CGST | | | | SGST | | | | IGST | | | | Cess | | | |
|---|-------|-----------|-----------------|---------------|-------|-----------|-----------------|---------------|-------|-----------|-----------------|---------------|-------|-----------|-----------------|---------------|-------|
| | | Liability | Credit utilized | Cash utilized | Ratio | Liability | Credit utilized | Cash utilized | Ratio | Liability | Credit utilized | Cash utilized | Ratio | Liability | Credit utilized | Cash utilized | Ratio |
| | Apr | | | | | | | | | | | | | | | | |
| | May | | | | | | | | | | | | | | | | |
| | Jun | | | | | | | | | | | | | | | | |
| | Jul | | | | | | | | | | | | | | | | |
| | Aug | | | | | | | | | | | | | | | | |
| | Sep | | | | | | | | | | | | | | | | |
| | Oct | | | | | | | | | | | | | | | | |
| | Nov | | | | | | | | | | | | | | | | |
| | Dec | | | | | | | | | | | | | | | | |
| | Jan | | | | | | | | | | | | | | | | |
| | Feb | | | | | | | | | | | | | | | | |
| | Mar | | | | | | | | | | | | | | | | |
| | Total | | | | | | | | | | | | | | | | |

| B | Liability for the month | CGST | | | | SGST | | | | IGST | | | | Cess | | | |
|---|-------------------------|-----------|-------|---|----------|-----------|-------|---|----------|-----------|-------|---|----------|-----------|-------|---|----------|
| | | Liability | Delay | Date of offsetting liability in returns | Interest | Liability | Delay | Date of offsetting liability in returns | Interest | Liability | Delay | Date of offsetting liability in returns | Interest | Liability | Delay | Date of offsetting liability in returns | Interest |
| | Apr | | | | | | | | | | | | | | | | |
| | May | | | | | | | | | | | | | | | | |
| | Jun | | | | | | | | | | | | | | | | |
| | Jul | | | | | | | | | | | | | | | | |
| | Aug | | | | | | | | | | | | | | | | |
| | Sep | | | | | | | | | | | | | | | | |
| | Oct | | | | | | | | | | | | | | | | |
| | Nov | | | | | | | | | | | | | | | | |
| | Dec | | | | | | | | | | | | | | | | |
| | Jan | | | | | | | | | | | | | | | | |
| | Feb | | | | | | | | | | | | | | | | |
| | Mar | | | | | | | | | | | | | | | | |
| | Total | | | | | | | | | | | | | | | | |

Compliances of GST in Banking Sector

ANNEXURE C
Details of Input Tax Credit

| A Month | Goods / services on which ITC is eligible (A) | | | | Goods / services on which ITC is ineligible (B) | | | | Total inward supplies | Out of (B), Value of capital goods on which credit is not availed on account of Section 16(3) of the CGST Act <i>(Depreciation claimed on Capital Goods on GST component under the IT Act, 1961)</i> |
|------------|---|-------------------------|------------------------|--------------------|---|-------------------------|------------------------|----------------------|-----------------------|---|
| | Value of Inputs | Value of Input services | Value of Capital goods | Total ITC eligible | Value of Inputs | Value of Input services | Value of Capital goods | Total ITC ineligible | To match with Annex 4 | |
| Apr | | | | | | | | | | |
| May | | | | | | | | | | |
| Jun | | | | | | | | | | |
| Jul | | | | | | | | | | |

| | | | | | | | | | | |
|-------|--|--|--|--|--|--|--|--|--|--|
| Aug | | | | | | | | | | |
| Sep | | | | | | | | | | |
| Oct | | | | | | | | | | |
| Nov | | | | | | | | | | |
| Dec | | | | | | | | | | |
| Jan | | | | | | | | | | |
| Feb | | | | | | | | | | |
| Mar | | | | | | | | | | |
| Total | | | | | | | | | | |

B Out of total of (A), eligible credits on supplies received from related persons and distinct persons

| GSTIN of supplier | Nature of relationship | Value of supply | | Tax | | |
|-------------------|------------------------|-----------------|----------|------|------|------|
| | | Goods | Services | CGST | SGST | IGST |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

ITC reversal

A Details of amount of tax credit paid as output tax liability u/s 16 r/w Rule 37, which was reclaimed during the year

| Month in which the credit was paid as output liability | Amount of ITC paid as output tax liability u/s 16(2) r/w Rule 37 | Amount of credit reclaimed upon payment of consideration | | | | | | | | | | | |
|--|--|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| | | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar |
| PY -3 | | | | | | | | | | | | | |
| PY -2 | | | | | | | | | | | | | |
| PY -1 | | | | | | | | | | | | | |
| Apr | | - | | | | | | | | | | | |
| May | | - | - | | | | | | | | | | |
| Jun | | - | - | - | | | | | | | | | |
| Jul | | - | - | - | - | | | | | | | | |
| Aug | | - | - | - | - | - | | | | | | | |
| Sep | | - | - | - | - | - | - | | | | | | |
| Oct | | - | - | - | - | - | - | - | | | | | |

| | | | | | | | | | | | | | |
|-------|--|---|---|---|---|---|---|---|---|---|---|---|---|
| Nov | | - | - | - | - | - | - | - | - | - | | | |
| Dec | | - | - | - | - | - | - | - | - | - | | | |
| Jan | | - | - | - | - | - | - | - | - | - | - | | |
| Feb | | - | - | - | - | - | - | - | - | - | - | - | |
| Mar | | - | - | - | - | - | - | - | - | - | - | - | - |
| Total | | | | | | | | | | | | | |

B Details of amount of tax credit paid as output tax liability u/s 16 r/w Rule 37, which was reclaimed during the year

| Month in which the credit was paid as output liability | Amount of ITC paid as output tax liability u/s 16(2) r/w Rule 37 | Month in which the amount of credit should have been paid as output liability u/s 16(2) r/w rule 37 | | | | | | | | | | | |
|--|--|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| | | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar |
| Apr | | | | | | | | | | | | | |
| May | | | | | | | | | | | | | |
| Jun | | | | | | | | | | | | | |
| Jul | | | | | | | | | | | | | |
| Aug | | | | | | | | | | | | | |

| | | | | | | | | | | | | | |
|-------|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Sep | | | | | | | | | | | | | |
| Oct | | | | | | | | | | | | | |
| Nov | | | | | | | | | | | | | |
| Dec | | | | | | | | | | | | | |
| Jan | | | | | | | | | | | | | |
| Feb | | | | | | | | | | | | | |
| Mar | | | | | | | | | | | | | |
| Total | | | | | | | | | | | | | |

NAME OF THE ASSESSEE

ANNEXURE D

Section 77 of the CGST Act

Details of transactions, where incorrect tax paid

| Month | Incorrect tax paid | | | Appropriate tax applicable | | | Appropriate tax paid | | | Refund claimed | | |
|-------|--------------------|------|------|----------------------------|------|------|----------------------|------|------|----------------|------|------|
| | CGST | SGST | IGST | CGST | SGST | IGST | CGST | SGST | IGST | CGST | SGST | IGST |
| Apr | | | | | | | | | | | | |
| May | | | | | | | | | | | | |
| Jun | | | | | | | | | | | | |
| Jul | | | | | | | | | | | | |
| Aug | | | | | | | | | | | | |
| Sep | | | | | | | | | | | | |
| Oct | | | | | | | | | | | | |
| Nov | | | | | | | | | | | | |
| Dec | | | | | | | | | | | | |
| Jan | | | | | | | | | | | | |
| Feb | | | | | | | | | | | | |
| Mar | | | | | | | | | | | | |
| Total | | | | | | | | | | | | |

Appendix

Clarification regarding Questionnaire for GST Audit of Banks

Point No. 3: In GST, there is no Concept of Centralised Registration. State wise registration prevails and each unit in the respective State should be added in the registration certificate classifying as a principal place of business in the State and others as additional place of business.

With effect from 1-02-2019, *vide the CGST (Amendment) Act, 2018*, the concept of business vertical is deleted. Now separate registration is allowed for multiple business premises within the same State.

In GST, a service receiver is liable to make payment as a recipient by virtue of section 9(3) of the CGST Act read with NN 13/2017-CTR and Section 9(4) of the CGST Act [read with *Notification No- 07/2019- Central Tax (Rate) dated 29-03-2019 (w.e.f.1-04-2019)* as amended]. [For details refer Chapter 3] The auditor should check whether concerned branch was also registered as a service recipient or not and whether related services were registered with the department.

Point No. 6: In order to understand the taxability of various supplies provided by the concerned branch/head office, it is important to identify the various supplies provided by such branch or head office. For this purpose, the auditors may analyse the various income heads (Operating and Non-Operating).

Hence, in GST List principal supplies provided by the unit registered assessee i.e., branch need to be taken by auditor from such branch.

Point No. 7: It is important to check whether any new service is provided by the concerned branch or head office. If yes, the auditor can check whether the same is updated in the GST Registration Certificate or not? However, GST portal allows addition of Top 5 supplies only. It becomes important because taxability of any activity depends upon its nature and any exemption or relief will be available accordingly.

Point No. 8: Section 35-36 of the CGST Act and Rule 56 to 58 of CGST Rules deals with provisions pertaining to accounts and records. Rule 56 of the CGST Rules provide for the documents with maintenance of accounts by registered

Compliances of GST in Banking Sector

persons. Rule 56(7) stipulates that every registered person shall keep the books of account at the principal place of business and books of account relating to additional place of business mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.

Section 36 *inter-alia* prescribes that, every assessee shall retain the books of accounts and other records until the expiry of 72 months (6 years) from the due date for filing of Annual Return for the year pertaining to such accounts and records. e.g., If the annual returns for the FY 2017-18 are filed on say 31.12.2018, the books of account and other records are to be maintained till 31.12.2024. Even if the annual return is filed earlier, the start date for considering 72 months runs from the end of due date to file the annual return.

In case an appeal or revision or any other proceeding is pending before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, or in case the assessee is under investigation for an offence under Chapter XIX, the assessee shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding or investigation for a period of one year after final disposal of such appeal or revision or proceeding, or for the period specified records under section 35(1), whichever is later

Point No. 10: GST is applicable in India including sea water upto 12 nautical miles including Jammu & Kashmir. Therefore, being a destination-based tax GST will apply by application of the provisions of place of supply as classified under the IGST Act, 2017. In case, services are provided outside India the same needs to be ascertained in terms of section 13 of the IGST Act which provide place of supply rules. (*Refer Place of supply provision discussed in Chapter 1*).

Point No. 11: Under GST NN 12/2017-CT(R) as amended from time to time, provides exemption to supply of services under the CGST Act. Parallel to this notification under CGST, Exemption to supply services is given under IGST *vide* NN 9/2017-IT(R).

Point No. 12: Transaction in money is excluded from the definition of goods and services given under section 2(52) and 2(102) respectively. Since GST is payable on supply of goods and services [charging section] the instant transaction is not exigible to GST. The relevant extract is hereunder:

(52) "**goods**" means every kind of movable property **other than money and securities** but includes actionable claim, growing crops, grass and

Clarification regarding Questionnaire for GST Audit of Banks

things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

(102) “**services**” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged

Where, Section 2(75) of the CGST Act defines money as:

“money” means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value

However, it is also provided that if any separate consideration is charged by the service provider/supplier, then the same will be taxable and GST shall be payable on such separate consideration.

For e.g., A is carrying 40\$ and wants to convert it into INR. A approaches a bank and gets an amount of ₹ 40*60 = ₹ 2400. In this case, no separate consideration is charged by the bank and the transaction is merely a transaction in money. However, if the bank recovers an additional amount say ₹ 100 for the same, it will be liable to GST.

Point No. 13: Securities/ derivatives are excluded from the definition of goods and services given under section 2(52) and 2(102) of the CGST Act, respectively and hence not exigible to GST.

Where Section 2(101) of the CGST Act defines securities as:

“securities” shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956

Further, section 2 of the Securities Contracts (Regulation) Act, 1956 defines

“securities” include—

- (i) *shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*
- (ia) *derivative;*
- (ib) *units or any other instrument issued by any collective investment scheme to the investors in such schemes;*

Compliances of GST in Banking Sector

- (ic) *security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“the SARFASI Act”);*
- (id) *units or any other such instrument issued to the investors under any mutual fund scheme;*
- (ii) *Government securities;*
- (iia) *such other instruments as may be declared by the Central Government to be securities; and*
- (iii) *rights or interest in securities.*

However, any sort of service charge collected by the supplier of service for such transaction shall be liable for the payment of GST.

Auditor can check whether GST is paid by the concerned branch on amount recovered as an additional consideration.

Point No. 14: Any services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discounts is mentioned in NN 12/2017-CT(R). However, if any additional amount is charged over and above interest or discounts the same would represent taxable consideration *vide* NN 12/2017-CTR.

Services covered under this exemption category are-

- Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- Corporate deposits to the extent that the consideration for advancing such loans and advances are represented by way of interest or discount.

Being an auditor, we can check whether any additional amount is recovered by the concerned branch/head office and the same is accounted for separately instead of treating it as a component of interest/ advance.

Point No.16:

Late fee in case of delayed payment of instalment of supply of goods and services shall be included in the value of supply as per section 15(2)(d) of the CGST Act. The same shall be liable to tax under GST.

Clarification regarding Questionnaire for GST Audit of Banks

While late fee in case of delayed payment of instalment of a money-to-money transaction will be included in the value of supply as per section 15(2)(d) of the CGST Act. The same shall be exempt through serial no 27 of the NN 12/2017-CTR. Therefore, late fee charges in this case shall not be taxable under GST.

[Refer Circular No. 102/21/2019-GST, dated 28-6-2019 read with corrigendum CBEC/20/16/4/2018-GST, dated 15-7-2019]

However, charges received in case of credit card are in the nature of consideration for the services rendered for using the convenience of services by way of a credit card and hence taxable.

Auditor can check whether such late payment charges recovered by the concerned branch are not shown as interest. These charges are taxable and GST shall be levied on the same.

Points 29:

- Under GST regime, Section 17(5) of the CGST Act, 2017 read with CGST Rules provides that ITC cannot be availed in respect of certain supplies. [Details list given in Chapter 5 -Section 17(5)].

Auditor can check whether ITC is not availed on supplies disallowed in GST law.

- As per section 17(4) and 17(2) read with CGST Rules an assessee in banking company or a financial institution including NBFC has to reverse 50% of the amount of ITC on monthly basis OR avail 50% of the eligible ITC on inputs, capital goods and input services in that month and the rest shall lapse. (discussed in Chapter-4)

Auditor can check whether, concerned branch (HO/RO/Designated branch) is reversing the ITC in compliance to the GST Acts read with CGST Rules. Further, we can check whether the rest 50% of the credit in case of GST is lapsed.

- Section 16(2) of the CGST Act, 2017 *inter alia* provides that no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless –
 - (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
 - (b) he has received the goods or services or both

Compliances of GST in Banking Sector

- (c) subject to section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of ITC admissible in respect of the said supply; and
- (d) he has furnished the return under section 39:

Further, where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Where a recipient fail to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Moreover, the recipient shall be entitled to avail ITC on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Point 30 and 31: The concept of ISD has been borrowed into GST from service tax, entitling a person who is registered as an ISD to distribute the credit in respect of input services (and not inputs) received in its name.

- ISD means an office of the supplier of goods or services or both which receives tax invoices towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of CGST, SGST/ UTGST) or IGST paid on the said services to a supplier of taxable goods or services or both having same PAN as that of the ISD.

Generally, the head office, or the corporate office, by whatever name called, would be the location to which the services would be billed. However, there is no implication by law that an ISD must be the head office.

Therefore, a company may choose to have multiple offices based on its business requirements to ensure that the office registered as ISD does not itself undertake any activity in the nature of outward supply, not receive inward supplies of its own or not attract RCM liability.

- Input Service Distributor has to compulsorily register as “ISD” apart from its registration as a normal taxpayer under the Act, wherein he has to specify under serial number 14 of the REG-01 form as an ISD

Clarification regarding Questionnaire for GST Audit of Banks

- Section 20 of the CGST Act read with Rule 39 of the CGST Rules deals with manner and procedure of distribution of credit by ISD. ISD shall distribute the credit of CGST as CGST or IGST and IGST as IGST or CGST, by way of issue of a document containing, the amount of ITC credit being distributed in such manner as may be prescribed and subject to certain conditions. ISD may distribute the credit available for distribution in the same month in which it is availed.
 - As per Rule 39(1)(e) and (f) of the said rules, ISD shall distribute:
 - ◆ ITC on account of CGST and SGST or UTGST
 - in respect of recipient located in the same state shall be distributed as CGST and SGST or UTGST respectively.
 - in respect of a recipient located in a State or Union territory other than that of the ISD, be distributed as IGST and
the amount to be so distributed shall be equal to the aggregate of the amount of ITC of CGST and SGST or UTGST that qualifies for distribution to such recipient in accordance with Rule 39(1)(d).
 - ◆ ITC on account of IGST shall be distributed as IGST.
 - the credit can be distributed to recipients of credit against a document containing such details as may be prescribed.
 - the amount of ITC distributed shall not exceed the amount of credit available for distribution
 - the tax credit available against any specific input services used entirely by one of the recipients can be allocated only to that recipient for utilization of such credit and not to other recipients.
 - the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipient(s) to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union Territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period
 - the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union Territory of such recipient, during the relevant

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period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

- Every ISD shall, for every calendar month or part thereof, furnish a return in **FORM GSTR-6** electronically within 13 days after the end of such month
- An ISD need not file annual returns as ISD

Hence, an Auditor can check the following points:

- (a) Ensure every person being an ISD shall make a separate application for registration as such ISD?
- (b) Whether an ISD invoice is issued to each recipient of credit on every distribution in terms of CGST Act read with CGST Rules?

Note - Where ISD is an office of a banking company or a financial institution, including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as prescribed (Rule 46).

- (c) Ensure, Credit distributed does not exceed the credit available for distribution?
- (d) Whether ISD is distributed credit to those taxable persons whose PAN no is same as that of ISD (Under GST)?
- (e) ISD means an office of the supplier of goods or services or both which receives tax invoices towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of CGST, SGST/ UTGST) or IGST paid on the said services to a supplier of taxable goods or services or both having same PAN as that of the ISD.
- (f) Whether credit attributable to a specific unit is distributed to that unit only?
- (g) Whether, Section 20 of the CGST Act is adhered in reference to the manner of distribution of credit by ISD?
- (h) Whether, procedure for distribution of ITC by ISD is adhered?
- (i) Whether, Credit of tax paid on input services used by more than one recipients who are operational is to be distributed to all of them based on the pro rata basis of turnover in a State / Union territory to aggregate turnover of all such recipients who have used such services.
- (j) Ensure that, each type of tax must be distributed through a separate ISD invoice?

Note- However, there is no requirement to issue ISD invoices at an invoice-level (received from the supplier of the service).

Clarification regarding Questionnaire for GST Audit of Banks

- (k) Whether the credit of IGST is be distributed as IGST irrespective of the location of the ISD?
- (l) Whether the CGST and SGST (or UTGST) is distributed as the CGST and SGST (or UTGST), respectively, where the ISD is located in the same State as that of the recipient?
- (m) Whether turnover for the distribution has been determined in accordance with the CGST Rules?

Point No.34: In terms of section 2(6) of the IGST Act, “*export of services*” means the supply of any service when, —

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [***or in Indian rupees wherever permitted by the Reserve Bank of India***]¹³; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Auditor should primarily check whether a transaction is export of service. After ascertaining that it is export of service, the auditor should further examine the refund claim on export, where export is made with/without payment of tax but after furnishing LUT in the latter case.

¹³ *Inserted vide The Integrated Goods and Services Tax (Amendment) Act, 2018- w.e.f. 01-02-2019*

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Annexure 1

Circular No. 199/11/2023-GST dated 17th July, 2023

Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.

1. Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act'). The issues raised in the said representations have been examined and to ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act has hereby clarified the issue in succeeding paras.

2. Let us consider a business entity which has Head Office (HO) located in State-1 and a branch office (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

3. The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act are being clarified in the Table below: –

| S. No. | Issues | Clarification |
|---------------|---|--|
| 1. | Whether HO can avail the input tax credit (hereinafter referred to as 'ITC') in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor | It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as |

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| <p>(hereinafter referred to as 'ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?</p> | <p>'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act. In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act. Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or</p> |
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| | | behalf of a BO, only if the said services have actually been provided to the concerned BOs. |
| 2. | In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the concerned BOs. | <p>The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.</p> <p>Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular</p> |

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| | | <p>component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.</p> |
| 3. | <p>In respect of internally generated services provided by the HO to BOs, in cases where full input tax credit is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.</p> | <p>In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.</p> |