

# Between Fine Lines

Notifications and Clarifications on  
October 9 & 11, 2019

CA. (Dr.) Gaurav Gupta  
Partner,  
**MGS & Co.**





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RESTRICTION  
OF 20% ON  
ITC NOT  
APPEARING  
IN GSTR 2A

# ITC Restricted

- Rule 36(4) introduced to provide that:

*“Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”*

- Implications:

- Restriction on availment of ITC upto that reflecting in GSTR 2A + 20%
- Monthly mapping of ITC with GSTR 2A required before filing monthly return in GSTR 3B.
- Is applicable from October 9, 2019 – applicable on return filed for the month of Oct., 2019 in Nov., 2019
- GSTR 2A need to be examined to weed out any ineligible ITC as such ITC would not help in determining limit.
- Interest implications in case of wrongful availment.
- No Limit applicable on ITC of import and reverse charge



# Example of Availment of ITC as per new Rule

Month	Eligible ITC as per Books	Total ITC as per 2A	Eligible ITC as per 2A	Available ITC (max: GSTR 2A + 20%)	Remarks
Oct-19	1,00,000	100,000	100,000	100,000	Ideal Scenario
Nov-19	1,00,000	80,000	80,000	96,000	Max ITC that can be availed: As per GSTR 2A + 20%
Dec-19	80,000	100,000	60,000	72,000	ITC even if higher in GSTR 2A relating to ineligible items like motor vehicle would not provide extra limit to assessee.
Jan-20	100,000	100,000	80,000	96,000	ITC even if higher in GSTR 2A relating to ineligible items like motor vehicle would not provide extra limit to assessee.
Feb-20	100,000	75,000 + entry of Nov, 19 ITC of Rs. 10,000 made by supplier in Feb, 20	75,000	90,000 + 10,000 Nov. ITC	ITC of previous month which was not updated earlier can be availed in subsequent month. However, there shall always be a limit of GSTR 2A ITC for the month +20%.
Mar-20	1,00,000	80,000	80,000	96,000 + 5,000	ITC reversed earlier for non payment within 180 days shall also be availed and be not considered for this limit.

# Challenges in Implementation of 20% rule

## Amendments

While the eligible ITC is fixed on the date of filing GSTR 3B, GSTR 2A is an evolving form and it amends for previous period also whenever a supplier furnishes return for past period.

## Impact on small suppliers

The provision shall be detrimental to small suppliers as they shall file their return on quarterly basis and purchasers would want reflection in GSTR 2A on monthly basis. This might hit their business adversely.

## Ineligible Credit

GSTR 2A does not have any specific restriction on ineligible credits (e.g. Food, motor vehicle etc.) and thus, taxpayers might inadvertently use the total figures (including ineligible) while computing the prescribed limit of reflected +20%



## Reversal under 16(4)

GSTR 3B does not contain a separate line for availing ITC reversed earlier under Section 16(4) and thus, in absence of any specific exception, these credits might also pose challenge in terms of their availment.

## Monthly matching


This exercise of matching GSTR 2A with Input tax register shall become a monthly exercise for all taxpayers and thus, the same will become a tedious monthly exercise for every taxpayer.

## No government facility for matching

No government facility is available to assist taxpayers in monthly matching and thus, taxpayers shall be forced to purchase costly solutions for such reconciliation.

# Challenges in Implementation of 20% rule

Month	Eligible ITC as per Books	Total ITC as per 2A	Eligible ITC as per 2A	Available ITC (max: GSTR 2A + 20%)	ITC Availed	Remarks
Oct-19	1,00,000	80,000	80,000	96,000	96,000	Ideal Scenario
Nov-19	1,00,000	1,00,000	1,00,000	1,00,000	1,10,000	Issue: A supplier filed his return adding another 10,000 to October, 2019 GSTR 2A. Benefit of such addition is availed by the taxpayer in November, 2019. However, if GSTN shall make a comparison for current month, the availment limit shall seem to fail.
Dec-19	1,00,000	150000 (higher ITC on account of purchase of Motor vehicle)	40,000	48,000	1,00,000	Issue: The system shall not be able to find this defaulter as his GSTR 2A total is more than his availed ITC
Jan-20	1,00,000	50,000	50,000	60,000	60,000	Issue: GSTR 2A did not reflect the ITC of small taxpayers who shall file their return GSTR 1 at quarter end. Thus, with no fault of either side, the ITC is blocked.
Feb-20	1,00,000	-	-	-	-	Issue: All purchases from small taxpayers filing quarterly return. This shall cause grave hardship to buyer or he will be forced to stop his purchases from small taxpayers.
Mar-20	1,00,000	80,000	80,000	96,000	1,20,000	Issue: Credit of ITC of Rs. 30,000 reversed earlier under Section 16(4) (for non payment within 180 days) now availed. However, GSTN cannot differentiate such availment and thus, might lead to issue of notices for wrongful availment.



*Know the rules!*



## CHANGES IN GST RULES



# Changes in Rules

Changes as effective from 9.10.2019

## GSTR 3B

Provisions have been amended to provide GSTR 3B as return under Section 39 retrospectively from 1.7.2017. no need to file GSTR 3 if GSTR 3B is filed.



## Changes in Recovery mechanism

Details of any tax, interest and penalty shall be communicated to the taxpayer before issuance of Show cause notice as ascertained by the Proper officer, in Part A of FORM GST DRC-01A. Where the such taxpayer has made partial payment of the amount or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A. In case of complete payment, he may intimate by DRC 03.



## Surrender of Registration

Person who has applied for cancellation cannot issue tax invoice or charge tax from recipient. In case of rejection, he can issue revised invoices and will be required to file return for such period.




## TRAN 1

Date for Transitional credit in TRAN 1 extended to December 31, 2019 for persons who could not avail such credit due to technical glitches and whose cases are recommended by GST Council. TRAN 2 has been extended to Jan 31, 2020.



## GSTP

GSTP to appear for examination within two years of enrolment



**CIRCULARS  
ISSUED ON  
11.10.2019**



# Clarifications on Classification

## Circular No. 113/32/2019-GST



### Leguminous vegetables

Mere Dried leguminous vegetables are classified under HS code 0713. Dried leguminous vegetable when mixed with other ingredients (oil, salt etc) or sold as namkeens, then it would be classified under CTH 2106



### Mechanical Sprayer

S. No. 195B of the Schedule II to notification No. 1/2017-CT covers “mechanical sprayers” of all types whether or not hand operated (like hand operated, power operated, battery operated, foot sprayer, rocker etc.)



### Imported stores by the Indian Navy

Imported stores for use in navy ships are entitled to exemption from GST



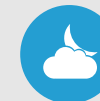
### Goods imported under lease

The expression “taken on lease/imported under lease”(in S. No. 557A and 557B respectively of notification No. 50/2017-Customs dated 30.06.2017) covers imports under an arrangement so as to supply services covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 to avoid double taxation.



### Parts of solar water heater

Parts including Solar Evacuated Tube falling under chapter 84, 85 and 94 for the manufacture of solar water heater and system will attract 5% GST.



### medical device parts / accessory

12% IGST would be applicable on the parts and accessories suitable for use solely or principally with a medical device falling under heading 9018, 9019, 9021 or 9022

# Clarifications on Classification

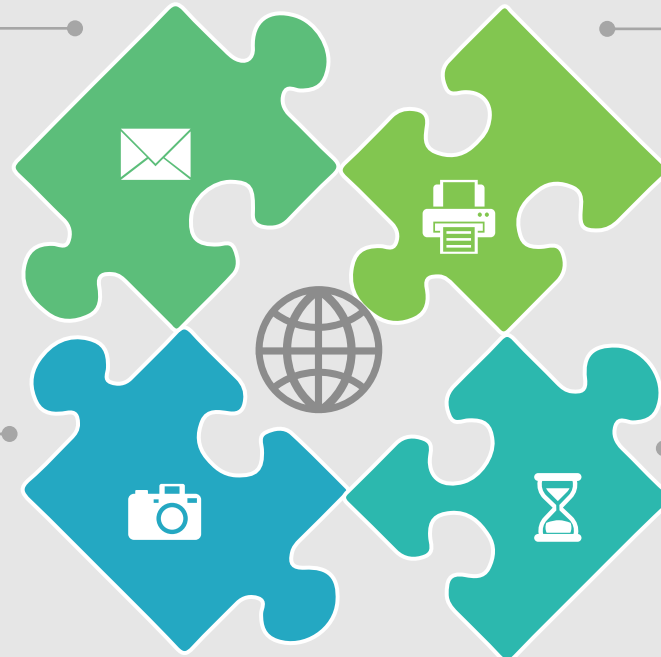
## Circular No. 114/118/119/120 of 2019

### Exploration Support services

Clarification on scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both and what is covered therein has been issued

### Place of Supply in services relating to ESDM industry

In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider and place of supply shall be the location of the recipient.



### Supply of Securities - SEBI

GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST.

### Effective date of explanation inserted

effective date of notification No. 17/2018-CTR dated 26.07.2018 whereby explanation was inserted in notification No. 11/2017-CTR dated 28.06.2017, Sr. No. 3(vi) to the effect that for the purpose of the said entry, the activities or transactions undertaken by Government and Local Authority are excluded from the term 'business' shall be 21.09.2017.



# Clarifications on Classification

**Circular No. 115/34/2019**

## **Concept of Pure Agent : Explained**

- PSF and UDF being charges levied by airport operator for services provided to passengers, are collected by the airlines as pure agent and is not a consideration for any service provided by the airlines and thus, airlines would not be liable to pay GST on same.
- The airline shall not take ITC of GST payable or paid on PSF and UDF.
- The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them

## **Our Comments**

- The explanation leads to a situation of double taxation whereby the airline who is reflecting ITC as pure agent would not include it in its tax payable, and without this, the Tax invoice would not form a valid document for availment of ITC, nor such ITC shall be reflected in GSTR 2A of the recipient.
- If the airline are not availing ITC charged by the licensee, they cannot even pass such tax to the recipient.
- In case of pure agent, the recipient avails ITC on the basis of Tax invoice of the supplier and not pure agent.

# Clarifications on Classification

**Circular No. 116/35/2019**

## **Concept of Donation : Explained**

- Certain charitable bodies (involved in advancement of religion, spirituality or yoga) take donations or gifts from individual donors which is acknowledged by them by placing name plates in the name of the individual donor.
- Where three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

## **Our Comments**

- The above clarification shall apply to all kinds of donation including those by educational institution, charitable hospitals, etc.
- Placing name shall not be service when it is expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity.
- This clarification shall serve as a respite to many charitable institutions who take donations against specific performance of work and where the grantor has merely humanitarian interest.
- Refer also, Circular No. 127/9/2010-S.T., dated 16-8-2010



# Clarifications on Classification

**Circular No. 116/35/2019**

## **Course recognised by law: Explained**

- Merchant Shipping Act, 1958 (44 of 1958) provides for the certificates of competency to be held by the officers of ships.
- Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014 empowers Director General of Shipping (“DGS”) to approve training program, institutes, designate assessment centres etc.
- Maritime Institutes approved by DGS are educational institutions under GST Law and the courses conducted by them are courses recognised by law and are exempt from levy of GST.

## **Our Comments**

- The above clarification shall apply to other similar kinds of courses which are approved by bodies empowered to monitor and approve under any Act of parliament or state government.
- The scope of recognised courses as exempt from GST has been expanded by this clarification.

# Clarifications on Classification

## Circular No. 121/40/2019-GST

### **GST on license fee charged by the States for grant of Liquor licences**

- GST Council in its 26<sup>th</sup> meeting held on 10.03.2018, recommended that GST was not leviable on license fee and application fee, by whatever name it is called, payable for alcoholic liquor for human consumption and that this would apply mutatis mutandis to the demand raised by Service Tax/Excise authorities on license fee for alcoholic liquor for human consumption in the pre-GST era, i.e. for the period from 01-04-2016 to 30-06-2017.
- Clause No. 117 of Finance (No. 2) Act, 2019 was inserted to provide exemption from service tax.
- By Notification No. 25/2019-CT(R), such supply has been notified as neither supply of goods nor supply of services in GST.
- This exemption / exclusion is specific and it is clarified that it has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations.

### **Our Comments**

- Doubts shall still remain for the remaining period in GST from 1.7.2017 to 30.09.2019 when notification was issued.



# DUE DATES



# Due Dates

## Due Dates of GSTR 1 and GSTR 3B

- Due date for FORM GSTR-3B notified for the months from October, 2019 to March, 2020 as on or before the twentieth day of the month succeeding such month. Due date of payment of tax is also notified as not later than the last date of filing such return.
- Due date for filing of Form GSTR-1 by registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from October, 2019 to March, 2020 has been notified as till 11<sup>th</sup> day of the month succeeding such month.
- For registered person having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year as under:
  - Oct to Dec, 2019: Jan 31<sup>st</sup>, 2020
  - Jan to Mar, 2020: April 30, 2020



# Other Changes

## Due Dates of GSTR 1 and GSTR 3B

- Due date for filing FORM GSTR-3B for the month of July and August 2019 for the state of Jammu and Kashmir has been notified as October 20, 2019.
- Due date for filing of Form GSTR-1 by registered persons (having aggregate turnover more than 1.5 Crores) for the month of July and August, 2019 for the state of Jammu and Kashmir has been extended till 11.10.2019





# Annual Return

- 1 Person having aggregate turnover in a financial year (for FY 2017-18 from Jul – Mar 18) upto Rs. 2 Crores has been given option to file annual return
- 2 Annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date
- 3 Annual return shall be deemed to be filed for the purpose of restricting limitation as provided in the GST statute
- 4 No data is presumed to be filled in such Annual return and thus, any data which is not filed by assessee cannot go to his detriment.



# MGS & Co.

## Chartered Accountants

**CA (Dr.) Gaurav Gupta**

Partner

**MGS & Co.**

**Chartered Accountants**

**O : LD - 65, Pitampura, Delhi – 110034.**

**P : +91 11 4571 8819, +91 11 4709 8819**

**M: +91 98110 13940**

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