

FREQUENTLY ASKED QUESTIONS

Queries relating to GST received from various sectors have been scrutinised and developed into short FAQs.

The fourth part, containing 50 questions and their answers, is given below.

PART-4

COMPOSITION

- Q.1** Whether a person can avail the composition scheme on Small Retail Trading of goods if he is holding both incomes like Sale of business: Rs. 25 lakh (Small Retail Trader) and Rental income: Rs. 12 lakh, whereas the person was registered earlier in VAT Composition Scheme and was paying Service Tax on rental income?
Ans Renting is a service and supplier of service, except restaurant service, cannot opt for composition scheme. Since you are supplying both goods & services, you are not eligible for composition scheme.
- Q.2** Can traders selling on ecommerce portals avail composition scheme if their turnover is less than Rs. 75 lakh?
Ans No. refer Sub-section (2) of Section 10 of CGST Act, 2017.

EXPORTS

- Q.3** Whether every registered person who intends to export requires fresh Bond/LUT even if the same was issued on or before 30.06.2017 and is still live i.e. not one year old.
Ans Circular No. 4/4/2017-GST dated 07.07.2017 clarifies this. Old LUT/bond is valid till 31.07.2017, after which fresh LUT/Bond in the new format is required to be submitted.
- Q.4** Some assessee had multiple central excise registrations under the earlier regime and were having different LUT/ Bond for each premises. In GST, there will be single registration for such assessee. Do they require furnishing fresh Bond/LUT for their principal place of business or the existing Bond/LUT issued to them prior to 30.06.2017 shall be applicable for the export purpose.
Ans Circular No. 4/4/2017-GST dated 07.07.2017 clarifies this. Old LUT/bond is valid till 31.07.2017, after which fresh LUT/Bond in the new format is required to be submitted.
- Q.5** With reference to clause 5 of Rule 96 A of CGST Rules, 2017 as inserted vide Ntf No. 15/2017 – Central Tax dated 01st July 2017 "(5) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond." It may be clarified as to whether any conditions and safeguard has been notified by the Board as on date, as certain parties have filed LUT for export in this office
Ans Yes, conditions and safeguards have been specified by Notification No. 16/2017-Central Tax dated 07.07.2017 and clarified in detail in Circular No. 4/4/2017-GST dated 07.07.2017. The sum and substance of these documents is that the facility of Letter of Undertaking in place of a bond is available to a registered person who is either (a) a status holder as specified in the Foreign Trade Policy 2015-2020; or (b) who has received the due foreign inward remittances amounting to a minimum of 10% of the export turnover, which should not be less than one crore rupees, in the preceding financial year. The person should not have been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or under any of the existing laws in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees.
- Q.6** In case of export of services, who will pay the service tax as for Bhutan, Nepal and Bangladesh?
Ans The place of supply is outside India but as the supplier is located in India, it is a case of inter-State supply and subject to IGST. It will be zero rated if the sale proceeds are realized in convertible foreign exchange.
- Q.7** Will GST be debited in duty credit scrips such as Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS)?
Ans No.
- Q.8** In view of definition of 'export of goods' given in Section 2(5) of the IGST Act, 2017, the supply of goods by the manufacturer to merchant exporter cannot be treated as exports as he is not taking out the goods out of India. He is supplying the goods to the merchant-exporter. Therefore, is the manufacturer required to pay CGST and SGST in all cases of exports by merchant-exporter even though the goods are being sealed in container for export from the premises of manufacturer-exporter? Does the merchant-exporter have the option either to avail option of Bond/LUT or to pay IGST for export of such goods?
Ans Yes. The manufacturer would be liable to pay CGST and SGST. The merchant-exporter has the option either to avail option of Bond/LUT or to pay IGST for export of such goods. There is no provision on the lines of Form H under the CST Act in the GST.
- Q.9** As per Rule 96A of CGST Rules, 2017, the LUT is to be accepted by the Jurisdictional Commissioner, Udaipur whereas in pre GST era the same was accepted by the Jurisdictional Deputy/Assistant Commissioner Kota. The Commissioner of Kota region has office at Udaipur which is 290 Kilometers away from Kota due to which it is impractical to file LUT at Udaipur with Commissioner as compared to previous procedure.
Ans Circular No. 2/2/2017-GST dated 04.07.2017 has clarified that an exporter wishing to export without payment of integrated tax may approach the jurisdictional AC/DC for acceptance of bond/LUT. Circular No. 4/4/2017-GST dated 07.07.2017 has further clarified that the bond/LUT shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter.
- Q.10** As per sub-rule 5 of rule 96A of CGST Rules, 2017, Board will notify where LUT is to be furnished in place of Bond. Since Board has not notified so far, therefore, this office is of the view that Bond is to be furnished in all cases as of now. Please clarify
Ans The Board has, vide Notification 16/2017-Central Tax dated 07.07.2017, specified the conditions and safeguards under which an exporter may file a LUT instead of a bond.
- Q.11** Whether in case of assessee exporting goods under LUT in Central Excise Act 1944, can export goods after 01.07.2017 under GST on the basis of the said LUT filed under Central Excise Act, 1944 until that LUT expires.
Ans In terms of Para 6 of Circular No. 4/4/2017 dated 07.07.2017 exports are allowed under existing LUTs/Bonds till 31st July 2017. Exporters shall submit the LUTs/Bond in the revised format latest by 31st July, 2017.
- Q.12** There is lack of clarity in the trade regarding the eligibility conditions for the LUT/Bond as per the Notification No. 16/2017-Central Tax. Para i (b) of the said notification requires the exporter to receive the due foreign inward remittances amounting to a minimum 10% of the export turnover, which should not be less than one crore rupees, in the preceding financial year. It is not clear for the exporters having an export turnover of say Rs. 5 Crore. For such people whose 10% of the export turnover is below one crore, what is the implication? Are those exporters who have received their total due inward remittance of e.g. Rs. 5 Crore eligible for availing the facility of LUT?
Ans Condition (b) in the said Notification means that : the registered person should have received at least 10% of his/her export turnover as foreign inward remittance in the preceding financial year and the foreign inward remittance in the preceding financial year should not be less than one crore rupees. E.g. if a registered person has an export turnover in FY 2016-17 of Rs. 5 crore and has received foreign inward remittance of Rs. 5 crore in the same FY, then he shall satisfy Condition (b), and shall be eligible for execution of LUT.

INVOICE & RETURNS

- Q.13** If an Assessee has two or more units with single registration, how the invoices are to be maintained viz., separate invoices unit wise or single invoice for all units?
Ans He can issue unit-wise invoice also. But there should not be any duplication in numbering system.
- Q.14** Do we have clarity on when invoice data uploading will begin on the GSTN?
Ans Government is ready to launch this. However, a simpler return called GSTR-3B has also been devised due to the demands from the trade and industry for extension of time limit for filing of normal returns.
- Q.15** Would head offices providing centralized HR, Finance and IT functions also need to raise invoices to its branches?
Ans Yes, if the head office and branches are distinct persons as specified in Section 25(4) of CGST Act, 2017 invoice is required to be issued and GST should also be paid.
- Q.16** Kindly clarify the accounting treatment of Credit Note while raising Invoice after implementation of GST?
Ans For the purpose of GST law, credit note can be issued to reduce the taxable value or to reduce tax payable or to claim goods return, where the relevant invoice had already been issued and taxable value or tax charged in that tax invoice is in excess. Section 34 of CGST Act, 2017 may be referred to for further details.
- Q.17** Whether any trader having turnover of less than Rs. 20 lakh needs to sell his goods on proper invoice/billing?
Ans Only registered persons are required to issue tax invoices as per provision of Section 31 of CGST Act, 2017 read with rules. An unregistered person may supply goods on ordinary commercial invoices and he cannot issue tax invoice.
- Q.18** What is the procedure/documents required for sending free replacement to the customers at free of cost?
Ans Where free replacement is provided to the customers without consideration under warranty, no GST is chargeable on such replacement. In such cases goods may be sent on delivery challan as provided in rule 55 of the CGST Rules, 2017.
- Q.19** If we are only dealing in exempted items what is the type of invoice we are required to issue to our buyers? Is it bill of supply or regular GST Invoice?
Ans You may issue a commercial invoice in such cases. However, if you are a registered person, you may issue a bill of supply for exempt supplies.
- Q.20** How the invoicing should be done for free goods given along with sale so that corresponding input tax credit is not required to be reversed for products under scheme?
Ans Invoice value would include value of all goods including those supplied free. In such cases, ITC is not required to be reversed.
- Q.21** Under GST, how to send demonstration equipment and instruments to customers or branch offices with in India on returnable basis? – No sale is involved
Ans As the goods are sent on returnable basis and no transfer of title is involved, it is not a supply of goods. If some element of service is involved, the same will be a taxable supply. The goods may be sent on delivery challan without invoice as it is not a supply of goods.
- Q.22** How to send equipment and instruments to manufacturers' factory for repairs and calibration with in India on returnable basis? – No sale is involved.
Ans Challan for movement of goods without supply is to be issued in terms of Rule 55 of CGST Rules.
- Q.23** Clarification is sought on the following: Revision in GSTR Returns
Ans Mistakes can be corrected in subsequent returns to be filed through amendment Table (For example Table 11 of GSTR-1). Such mistakes can be corrected till the due date for filing of the return for the month of September subsequent to end of the year or filing of the annual return, whichever is earlier.

INPUT TAX CREDIT

- Q.24** How can a trader avail ITC while selling goods/services to unregistered/exempted GST traders?
Ans The fact that a registered person is supplying goods to an unregistered or exempted person has no consequence on availment of ITC by the supplier.
- Q.25** Please clarify the procedure of availing ITC on Additional Compensation Cess on some products like Tobacco, Coke, Cigarettes.
Ans ITC of cess can be used only for payment of cess
- Q.26** Please clarify ITC Credit status for the following condition: If Recipient (Good & Service) is registered under GST & Re-seller / Supplier is under exemption or composition schemes
Ans In case of unregistered dealer, recipient will pay tax on reverse charge basis. He can get the ITC provided he fulfills other conditions as mentioned in section 16 of the CGST Act, 2017. In case of purchase from composition taxable person, the composition person cannot charge any tax and hence the question of availing ITC does not arise.
- Q.27** Please clarify ITC Credit status for the following condition: On GST Deducted Commission for Distributor registered under GST Taxpayer
Ans Any deductions under TDS/TCS provisions from amount paid or credited to the supplier shall be credited to the electronic cash ledger which can be used for payment of tax.
- Q.28** Please clarify ITC Credit status for the following condition: if Commission received Without Deducting GST in cases where distributor under Exemption or composition Scheme
Ans The section concerning GST deduction (Section 51 of CGST Act, 2017) has not been operationalized till now. But if the distributor is under threshold exemption or under composition scheme, the requirement for GST deduction depends upon the taxable supply and value of contract rather than the nature of the supplier.
- Q.29** How should importers take credit of clean energy cess paid on goods lying as stock 30.06.2017?
Ans No credit for clean energy cess can be taken.
- Q.30** Since our products are under 0% and we are using various services like telephone, professional charges for which we will be paying GST to our registered service providers and this amount will not be utilized towards any payment of outward goods. Are we eligible for refund on the services obtained and GSTN paid for the same? If yes what is the procedure? If no what is the accounting effect?
Ans You are not eligible for refund of unutilized Input Tax Credit as there is no tax on output supply. Tax paid on such services may be accounted along with the services availed i.e. booked as expenses.
- Q.31** Whether ITC Transition provisions on goods purchased within the State on which tax on MRP has been paid, covered under 140(3) or 140(1)? If covered under 140(1) then how a credit claim be made, as presently in Vat return only the amount is reflected and it is non-adjustable?
Ans Section 140 (1) of CGST Act is applicable for a person who was registered under the existing laws (e.g. under Central Excise, Service Tax, Value Added Tax). And therefore, credit of taxes paid on inputs was getting recorded in the returns filed. Section 140 (3) of CGST Act is applicable for persons who were not liable for registration under existing laws or who were selling/providing non-taxable, exempt goods/services but their supplies are liable to tax under GST. Please also refer to Section 140 of the SGST Act of your respective state and the associated rules.
- Q.32** Please clarify on availment of input tax credit of GST paid on trucks, commonly used for G.T.A business, Safex, Multi-modal and packing business?
Ans No ITC is permitted to GTA engaged in providing GTA services which are under RCM and are treated as exempted supplies in the hand of GTA. However, if GTA is also liable to pay tax under forward charge as supplier, he is not permitted to avail ITC if he is claiming the concessional rate of 5%. If ITC is claimed, the GST rate for GTA in forward charge will be 18%.
- Q.33** What will be the Input Credit of newly launched project of building construction after 01.07.2017?
Ans ITC is permitted to pay output tax of construction/work contract services. Please see Section 17(5)(c) and (d) of CGST Act, 2017.
- Q.34** What are the provisions under CGST Act as to the eligibility of CENVAT credit of service tax on invoices which are received after the appointed date for the services received under the service tax regime?
Ans ITC is available in terms of section 140(5) of CGST Act, 2017.
- Q.35** How a service Provider can get input GST credit benefit in pure labour Contract under Input Credit?
Ans He needs to use input for furtherance of business and should fulfill the conditions mentioned in section 16 of CGST Act, 2017. The input should not fall within the negative list provided in section 17(5) of the CGST Act, 2017.
- Q.36** GSTR-1 (Point 9) – As banks are eligible to claim only 50% of Input credit consider excluding banks from reporting of exempt/ non-GST supplies in GSTR-1?
Ans Return Rules have already been notified. It is not possible to make exception for one sector.
- Q.37** Clarification is sought for the following: Penal Interest on loans and advances
Ans Penal interest is a consideration for tolerating an act and it is a supply of service and will be taxable.
- Q.38** In case of takeover of a Partnership firm by a Private Limited Company, then who will get the ITC credit? And who should file the GSTR TRAN-1?
Ans If the business is transferred as a going concern, and liabilities are also transferred then ITC can be transferred to the company. The company can file TRAN-1.

JOB WORK

- Q.39** Whether the job worker (who converts barley into Malt) has to charge GST from the Principal only on the Job Work charges or full value of goods, i.e. (Value of Raw Material + Job Work Charges)?
Ans The job worker has to pay GST on job work charges only.
- Q.40** In case of job workers not operating under Notification 214/86-CE (i.e. registered under excise at present), whether they can carry forward the credit availed on RM/PM supplied to them by the principal manufacturer? Also is there any restriction on carry forward of the credit on input services distributed to them by the principal as ISD under Rule 7 of the Credit Rules and remaining unutilized on the day of GST implementation?
Ans The credit on RM/PM supplied by the principal manufacturer can be availed by the manufacturer rather than the job worker. Section 141 of CGST Act, 2017 refers. Further if job worker is registered under existing law, Cenvat Credit in respect of input services received from ISD as shown in return can be carried forward.

LEVY

- Q.41** Should GST be charged on labour charges in an invoice?
Ans Yes, if the activity is taxable.
- Q.42** Would tax be payable on sale of business assets on which no credit was claimed?
Ans Yes provided the aggregate value of supplies is more than Rs. 20 lakh (Rs. 10 lakh in special category States).
- Q.43** What kind of facilities provided by employer to employee would be liable to GST? For instance, whether club membership provided will be considered as "service"?
Ans The compensation to employees in the form of money is not a supply. However, fringe benefits are supply of goods or services and are liable to tax if not exempted. These are transactions in furtherance of business and even if supplied without consideration, the same are deemed supply.
- Q.44** An USA based company provides services to its account holders spread worldwide. Whether services given by it would be covered under Section 13(8) of IGST Act?
Ans If the place of supply is in India, the registered recipient will have to pay tax under reverse charge and if the recipient is unregistered, company will pay GST in accordance with section 14 of IGST Act.
- Q.45** Whether 5% GST applicable to the Transport service provider is to be charged on the total freight amount bill?
Ans It will be on the invoice value of GTA services determined in terms of Section 15
- Q.46** Does Rental Income less than Rs. 20 Lakh per annum attract GST?
Ans No. That said, where the rental income from a single property is less than Rs. 20 lakh but the aggregate rental income from various properties exceed rupees twenty lakh, the requirement for registration and GST payment will be there.
- Q.47** In reference to Section 15 of GST, CTT and STT are statutory levy under Income Tax. Is there any GST tax on another governmental Tax, SEBI Fees and Stamp Duty as per Various State Government rates?
Ans As per Section 15 the value will be inclusive of all taxes except CGST, SGST, UTGST and IGST. So all taxes will be included in the value for the purpose of GST except where benefit of Pure agent as provided in Rule 33 of CGST Rules, 2017 is availed.
- Q.48** Provisions of Notification no. 7/2017 Central Tax are applicable under CGST only. Kindly clarify whether provisions of notification no. 7/2017 will be applicable for SGST Act, IGST Act and UTGST Act?
Ans Separate notifications are issued under SGST Act, IGST Act and UTGST Act.
- Q.49** Whether GST would be payable in case of demand of excise duty made upon finalization of provisional excise assessment in post GST period?
Ans Demands arising from finalization of provisional assessments under the Central Excise Act, unless recovered under the said Act, shall be recovered as an arrear of tax under GST Act.
- Q.50** What option shall be opted while clearing samples from factory to warehouse location:
 a) No GST should be levied but corresponding ITC should be reversed
 b) GST should be levied but GST (ITC) paid on samples cleared should be reversed at receiving warehouse location.
Ans Depends upon the location of the factory and warehouse. If both are located in the same State and not registered separately, no GST is to be charged. Once finally supplied to any other recipient, no GST is to be charged but ITC on the same is to be reversed.

Disclaimer : The replies given above are only for educational and guidance purposes and do not hold any legal validity.

