

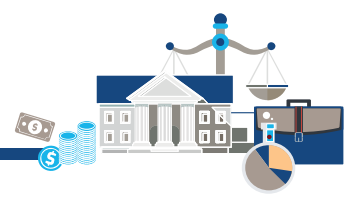
# Clarifications emanating from the 50<sup>th</sup> GST Council Meeting

Pursuant to the recommendations made in the 50<sup>th</sup> GST Council Meeting, the Central Board of Indirect Taxes and Customs ('CBIC') issued various circulars on July 17, 2023, clarifying the tax positions relating to Input Services Distributor ('ISD'), cross charge / internally generated services, warranty transactions, refunds etc.

These clarifications are summarised as under:

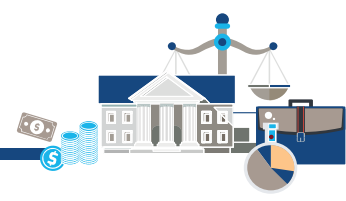
Issue	Clarifications
<b>Cross Charge vs ISD<sup>1</sup></b>	<ul style="list-style-type: none"> <li>• Allocation of common ITC through cross charge or ISD mechanism has been an intriguing issue under the GST Law.</li> <li>• It has been clarified that distribution of common ITC is not mandatory through ISD mechanism. Thus, a head office can avail ITC on common expenses (in its normal GST registration) and allocate such ITC amongst the respective branch offices by raising tax invoices i.e., following cross charges mechanism.</li> <li>• With respect to the support services provided by head office to its branch offices (i.e., internally generated services) on their own, there were debates around valuation of such service including addition of salaries of head office employees.</li> <li>• It has been clarified that where branch offices are eligible to avail full ITC, the value declared on the invoice issued by the head office shall be accepted for levy of GST. Further, if the invoice is not issued, the value shall be deemed to be 'nil'.</li> <li>• In case where branch offices are not eligible to avail full ITC, it is still not mandatory to include salary of head office employees for computation of value for cross charge.</li> </ul>

<sup>1</sup> Circular No. 199/11/2023-GST dated July 17, 2023



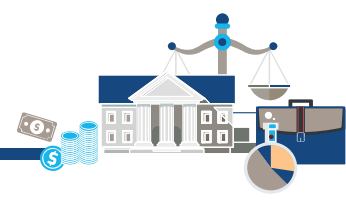
Issue	Clarifications
	<p><b>Dhruva Comments:</b></p> <p><i>This clarification will put to rest any past disputes on the sanctity and valuation of cross-charge invoices. The clarification that no cross-charge is required where full ITC is available even at nil value relieves taxpayer of avoidable burden. Yet, in cases where branch offices are not eligible to claim full ITC, the ambiguity around cross charges will continue.</i></p>
<p><b>GST implications on replacement / repair during warranty period<sup>2</sup></b></p>	<p><b>Replacement / repair under warranty by the manufacturer</b></p> <ul style="list-style-type: none"> <li>• Replacement of defective parts or repairs by the manufacturer to the customer under warranty period, will not be exigible to GST as the likely cost of such replacement / repairs was already included in the value of original supply of goods (on which GST has been paid).</li> <li>• Also, the manufacturer will not be required to reverse any ITC in respect of such replacement / repair transaction.</li> <li>• If the manufacturer charges a consideration towards such replacement or repair services, the same shall be liable to GST.</li> </ul> <p><b>Replacement / repair under warranty by the distributor</b></p> <ul style="list-style-type: none"> <li>• No GST implications will arise on replacement / repair services provided by the distributor to the customer to fulfil warranty obligations, on behalf of the manufacturer without any consideration.</li> <li>• In case any consideration is charged by the distributor from the customer for supplies other than covered by warranty, the same will be liable to GST.</li> <li>• To facilitate such warranty, the distributor may either use his own stock or procure it from third parties and make recovery from the manufacturer. The distributor may also recover the repair charges from the manufacturer. In such cases, the distributor will be liable to pay GST on such consideration charged. The manufacturer will be eligible to avail ITC on the same.</li> <li>• In cases where the parts were supplied by the manufacturer but, used by the distributor in providing warranty replacements, the manufacturer can issue a credit note for the replaced part, in terms of Section 34(2) of the CGST Act.</li> <li>• Also, GST shall not be payable on free of cost parts provided by the manufacturer to the distributor for warranty replacements. The manufacturer is eligible to avail ITC on procurement of such parts.</li> </ul>

<sup>2</sup> Circular No. 195/08/2023-GST dated July 17, 2023



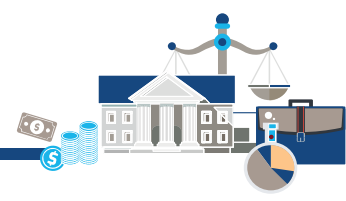
Issue	Clarifications
	<p><b>Extended Warranty</b></p> <ul style="list-style-type: none"> <li>Where the customer enters into an agreement of extended warranty at the time of making original supply of goods, the same will be treated as a part of composite supply and will be liable to GST as applicable on the principal supply of goods.</li> <li>In case where the customer enters into an agreement of extended warranty after the supply of original goods, GST will be payable based on the nature of the supply i.e., warranty for goods or services or both.</li> </ul> <p><b>Dhruva Comments:</b></p> <p><i>The Circular provides much-needed clarifications on certain nebulous issues, which will provide relief to the industry. The transaction involving issuance of GST credit note may be legally tested in context of provision of Section 34(2) of the CGST Act. Separately such credit note will have to pass the muster in light of the judgement of Supreme Court in <b>Tata Motors Ltd vs Deputy Commissioner of Commercial Taxes (SPL) &amp; Anr, TS-227-SC 2023</b>- the supreme court held the issuance of commercial credit note in respect of parts provided under warranty qualifies as a consideration.</i></p>
<p><b>Interest calculation on wrongly availed IGST credit<sup>3</sup></b></p>	<ul style="list-style-type: none"> <li>Section 50(3) of the CGST Act imposes interest on ITC wrongly availed and utilised. Rule 88B of the CGST Rules <i>inter-alia</i> provides that wrongly availed ITC shall be deemed to be utilised to the extent it falls below the balance of Electronic Credit Ledger ('ECL').</li> <li>It has been clarified that since ITC of IGST, CGST and SGST can be used for payment of IGST liability, the cumulative ECL balance under all three heads needs to be considered for computation of interest on wrongly utilised ITC of IGST.</li> <li>Thus, if ITC of IGST has been wrongly availed and reversed subsequently, interest will be payable only if the cumulative ECL balance of IGST, CGST and SGST is less than the value of wrongly availed ITC.</li> <li>It is also clarified that ITC of compensation cess available in the ECL will not be considered for the above computation, as the same can be utilised only towards payment of compensation cess liability.</li> </ul> <p><b>Dhruva Comments:</b></p> <p><i>The clarification is limited to wrongly availed ITC of IGST. Hence, strictly, prior to introduction of Rule 88A, interest liability is payable on wrongly availed ITC of CGST / SGST, even if there is sufficient ITC balance of IGST in the ECL.</i></p>

<sup>3</sup> Circular No.192/04/2023-GST dated July 17, 2023



Issue	Clarifications
<p><b>Difference between ITC availed in Form GSTR-3B and ITC appearing in Form GSTR-2A for period April 1, 2019 to December 12, 2021<sup>4</sup></b></p>	<ul style="list-style-type: none"> <li>• Since the inception of GST, the industry has been dealing with the controversy of availment of ITC on invoices not appearing in Form GSTR-2A. A condition with respect to the same was introduced for the first time vide Rule 36(4) of the CGST Rules with effect from October 9, 2019, which restricted availment of ITC on the invoices not appearing in Form GSTR-2A up to 20% of the total eligible ITC appearing in Form GSTR-2A. The said limit was reduced to 10% from January 1, 2020, and further to 5% from January 1, 2021.</li> <li>• Finally, clause (aa) was inserted in Section 16(2) of the CGST Act to restrict availment of ITC, only to the invoices appearing in Form GSTR-2B, with effect from January 1, 2022.</li> <li>• <i>Vide Circular No. 183/15/2022-GST, December 27, 2022</i> ('Circular No. 183/2022'), the CBIC <i>inter alia</i> clarified that for the Financial Year ('FY') 2017-18 and 2018-19, where invoices are not appearing in Form GSTR-2A, the proper officer shall verify fulfilment of condition of clause (c) of sub-section (2) of Section 16 of CGST based on certification regarding payment of tax from: <ul style="list-style-type: none"> <li>- The concerned supplier, where the difference of ITC qua a supplier for a FY is less than Rs. 5 lakhs: or</li> <li>- A Chartered Accountant or Cost Accountant of the supplier, where the difference of ITC qua a supplier for a FY exceeds Rs. 5 lakhs.</li> </ul> </li> <li>• With respect to the unmatched ITC for future periods, it has now been clarified that: <ul style="list-style-type: none"> <li>- For the period from April 1, 2019 to October 8, 2019 - the verification mechanism of Circular No. 183/2022 shall be applicable; and</li> <li>- For the period from October 9, 2019 to December 31, 2021 - the verification mechanism of Circular No. 183/2022 shall be applicable to the extent ITC is available as per Rule 36(4) of the CGST Rules (i.e., up to prescribed threshold limit)</li> </ul> </li> <li>• Furthermore, from January 01, 2022 onwards, ITC shall not be allowed unless it is appearing in Form GSTR-2B.</li> <li>• The above clarification shall also be applicable to the ongoing proceedings under scrutiny / audit / investigation etc. and not to the completed proceedings.</li> </ul> <p><b>Dhruva Comments:</b></p> <p><i>It is a welcome clarification as the industry has been subject to demands for period post March 31, 2019. While Karnataka High Court in <b>Wipro Limited India vs The Assistant Commissioner of CGST and Ors. 2023 (1) TMI 499</b> observed that Circular No. 183/2022 should equally apply to FY 2019-20, the same was not being accepted.</i></p>

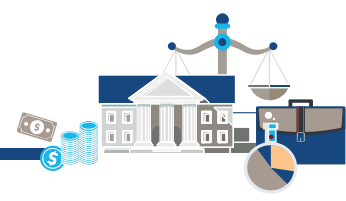
<sup>4</sup> Circular No. 193/05/2023-GST dated July 17, 2023



Issue	Clarifications
<p><b>Clarification on issues related to refund<sup>5</sup></b></p>	<p><b>Refund of ITC allowed if invoices are appearing in Form GSTR-2B</b></p> <ul style="list-style-type: none"> <li>It has been clarified that from January 2022 onwards, refund of accumulated ITC shall be available only on the invoices / debit notes which are appearing in Form GSTR-2B instead of Form GSTR-2A. The said clarification is provided in the wake of insertion of clause (aa) in Section 16(2) of CGST Act, which imposes mandatory condition for availing ITC only on appearance of invoices / debit notes in Form GSTR-2B.</li> <li>Refund shall be available only on ITC availed basis those invoices / debit notes which are appearing in Form GSTR-2B of January 2022 onwards or of the past periods.</li> <li>However, it has been clarified that in cases where refund claims for a tax period from January 2022 onwards has already been disposed by the proper officer, the same shall not be reopened.</li> </ul> <p><b>Computation of Adjusted Turnover</b></p> <ul style="list-style-type: none"> <li>An Explanation was inserted in Rule 89(4) of the CGST Rules prescribing the value of goods exported (i.e., lower of tax invoice value or FOB value of shipping bill) for computation of refund amount.</li> <li>It is now clarified that the above explanation shall also be used in calculating the Adjusted Total Turnover.</li> </ul> <p><b>Admissibility of refund in certain cases</b></p> <ul style="list-style-type: none"> <li>In terms of Rule 96A of the CGST Rules, where the supplier fails to export goods within three months from the date of invoice or fails to realise convertible foreign exchange within one year from the date of invoice for export of services, the supplier is required to pay applicable IGST along-with interest within the 15 days after expiry of the aforesaid timelines.</li> <li>It has been clarified that the supplier can claim the refund of the said IGST paid, when goods are exported, or convertible foreign exchange is realised against export of services. It may however be noted that no refund shall be allowed on the interest paid.</li> <li>Further, such refund can be claimed under the 'Any other' category till the category of 'excess payment of tax' for the aforementioned case becomes available on GST portal.</li> </ul>
<p><b>Taxability on activity of holding shares in a subsidiary company<sup>6</sup></b></p>	<ul style="list-style-type: none"> <li>Lately authorities have been issuing notices regarding non-payment of GST merely on holding shares in the subsidiary companies on the grounds that the said activity is covered under the service code 997171 in the scheme of classification of services as <i>"the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest"</i>.</li> </ul>

<sup>5</sup> Circular No. 197/09/2023-GST dated July 17, 2023

<sup>6</sup> Circular No. 196/08/2023-GST dated July 17, 2023



Issue	Clarifications
	<ul style="list-style-type: none"> <li>The Circular clarifies that the activity of holding shares in a subsidiary company <i>per se</i> is not a supply of service and hence, not taxable under GST.</li> </ul>
<b>TCS liability where multiple E-Commerce Operators ('ECO') are involved in a single transaction<sup>7</sup></b>	<ul style="list-style-type: none"> <li>An ECO is liable to collect TCS on the supply made through it, where the consideration is collected by such ECO.</li> <li>In few cases, a single transaction may involve two ECOs, i.e., one which interacts with the buyer and the other which interacts with the supplier. In such cases, there arose an ambiguity as to which ECO is liable to collect TCS.</li> <li>It has been clarified that in the said transactions, the supplier side ECO who finally releases the payment to the main supplier, will be liable to collect TCS under. However, where the supplier side ECO is itself selling the goods through its electronic platform, the buyer side ECO shall collect TCS.</li> </ul>

<sup>7</sup> Circular No. 194/05/2023-GST dated July 17, 2023







## ADDRESSES

### Mumbai

1101, One IndiaBulls Centre,  
11th Floor, Tower 2B,  
841, Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400 013  
Tel: +91 22 6108 1000 / 1900

### Ahmedabad

B3, 3rd Floor, Safal Profitaire,  
Near Auda Garden,  
Prahladnagar, Corporate Road,  
Ahmedabad - 380 015  
Tel: +91-79-6134 3434

### Delhi / NCR

101 & 102, 1st Floor, Tower 4B  
DLF Corporate Park  
M G Road, Gurgaon  
Haryana - 122 002  
Tel: +91-124-668 7000

### Pune

305, Pride Gateway,  
Near D-Mart, Baner,  
Pune - 411 045  
Tel: +91-20-6730 1000

### Kolkata

4th Floor, Unit No 403, Camac Square,  
24 Camac Street, Kolkata  
West Bengal – 700016  
Tel: +91-33-66371000

### Abu Dhabi

Dhruva Consultants  
1905 Addax Tower, City of Lights,  
Al Reem Island,  
Abu Dhabi, UAE  
Tel: +971 26780054

### Dubai

Dhruva Consultants  
Emaar Square Building 4, 2nd Floor,  
Office 207, Downtown,  
Dubai, UAE  
Tel: +971 4 240 8477

### Singapore

Dhruva Advisors (Singapore) Pte. Ltd.  
20 Collyer Quay, #11-05  
Singapore 049319  
Tel: +65 9105 3645

## KEY CONTACTS

### Dinesh Kanabar

Chief Executive Officer  
dinesh.kanabar@dhruvaadvisors.com

### Niraj Bagri

niraj.bagri@dhruvaadvisors.com

### Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

### Kulraj Ashpni

kulraj.ashpni@dhruvaadvisors.com

---

Dhruva Advisors has been consistently recognised as the “India Tax Firm of the Year” at the ITR Asia Tax Awards in 2017, 2018, 2019, 2020 and 2021.

Dhruva Advisors has also been recognised as the “**India Disputes and Litigation Firm of the Year**” at the ITR Asia Tax Awards 2018 and 2020.

WTS Dhruva Consultants has been recognised as the “**Best Newcomer Firm of the Year**” at the ITR European Tax Awards 2020.

Dhruva Advisors has been recognised as the “**Best Newcomer Firm of the Year**” at the ITR Asia Tax Awards 2016.

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for General Corporate Tax** by the International Tax Review in its World Tax Guide.

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for Indirect Taxes** in International Tax Review's Indirect Tax Guide.

Dhruva Advisors has also been consistently recognised as a **Tier 1 Firm in India for its Transfer Pricing** practice in the ranking table in ITR's World Transfer Pricing guide.

## Disclaimer:

The information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and professional opinions. Before acting on any matters contained herein, reference should be made to subject matter experts, and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of any material contained in this publication.

