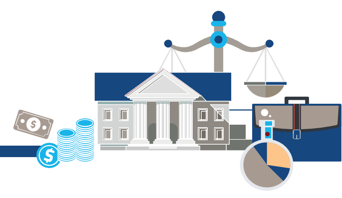
Clarifications Post 54th GST Council Meeting

Pursuant to the recommendations given in the 54th GST Council Meeting, the Central Board of Indirect Taxes and Customs ('CBIC') issued 4 Circulars on September 10, 2024 clarifying the position on input tax credit (ITC) eligibility of demo vehicles, place of supply for advertising services provided to foreign entities, place of supply of data hosting services provided to cloud computing service providers located outside India and IGST refund regularisation under Rule 96 (10) of the CGST Rules.

These clarifications are summarised as under:

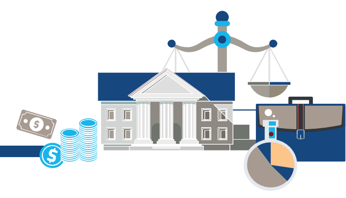
Issue	Clarification
ITC on demo vehicles[1]	• Demo vehicles, maintained by authorized motor vehicle dealers, typically reflected as capital assets in their books are used for test drives and to demonstrate vehicle features to potential buyers. • Section 17(5)(a) restricts ITC on motor vehicles used for passenger transportation with an approved seating capacity of not more than 13 persons (including the driver), except when they are used for making the following taxable supplies: o Further supply of such motor vehicles, o Transportation of passengers, or o Imparting driving training. • Since demo vehicles are used to demonstrate features to potential buyers, they fall under the category of "further supply of motor vehicles" as per Section 17(5)(a). Hence, ITC on demo vehicles is available, as they facilitate the sale of similar vehicles. • If demo vehicles are used for purposes other than "further supply," such as staff transportation or other business purposes unrelated to vehicle sales, ITC will not be available.

[1] Circular No. 231/25/2024-GST dated September 10, 2024



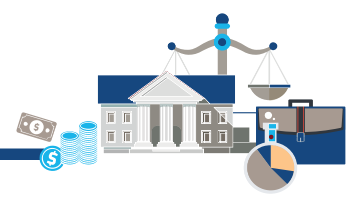
Issue	Clarification
	• In cases where an authorized dealer provides test drives or marketing services on behalf of the manufacturer without being directly involved in the sale of the vehicles, ITC is blocked. Here, the dealer is acting as an agent, and the demo vehicle is not being used for the dealer's own "further supply" of motor vehicles. • If demo vehicles are capitalized in the books of account of the dealer, they qualify as capital goods under Section 2(19) of the CGST Act. However, as per Section 16(3), if depreciation has been claimed on the tax component of the cost of such demo vehicles under the Income-tax Act, 1961, ITC will not be available. Additionally, upon the sale of these vehicles, tax will be payable as per Section 18(6) of the CGST Act. **Dhruva Comments:** *This circular provides much-needed clarity on ITC eligibility for demo vehicles. The industry has been grappling with tax demands on demo vehicles with divergent rulings on this subject. The Circular now confirms that ITC can be availed when demo vehicles are used to promote the sale of similar motor vehicles by authorized dealers. However, ITC will be blocked if the vehicles are used for non-sales purposes, such as staff transportation or if the dealer is only providing marketing services without selling the vehicles.*
Place of supply for advertising services provided by Indian agencies to foreign entities [2]	• When an Indian advertising agency provides comprehensive advertising services to a foreign client, the place of supply is the location of the recipient (the foreign client). Such services thus qualify as an export of services under Section 2(6) of the IGST Act (subject to fulfilment of other conditions). • The Indian agency is not considered an intermediary because it engages in the principal-to-principal capacity while rendering such services. It provides services on its own account to the foreign client, and thus, Section 13(8)(b) (intermediary service) does not apply. • The foreign client paying for the services is considered the recipient, not the Indian audience that views the advertisement. These advertising services are also not categorized as performance-based under Section 13(3), as they do not involve any goods that need to be physically present nor require the physical presence of the foreign client. • If the advertising agency only facilitates the transaction between the foreign client and the media owners (e.g., providing media space), it is treated as an intermediary, and the place of supply will be the location of the Indian agency. **Dhruva Comments:** *This clarification supports the expanding role of the Indian advertising sector on the global stage. It reaffirms the government's position on intermediary services and emphasizes that when services are provided on a principal-to-principal basis (and own accord), they are not categorized as intermediary services. This distinction ensures that comprehensive advertising*

[2] Circular No. 230/24/2024-GST dated September 10, 2024

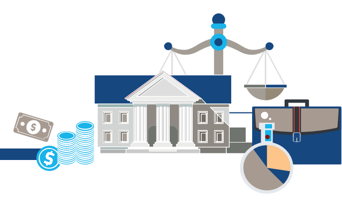


Issue	Clarification
	services rendered directly to foreign clients qualify as exports, benefiting Indian agencies by making them eligible for export-related benefits.
Place of supply of data hosting services provided to cloud computing service providers located outside India[3]	• When data hosting services are provided by an Indian service provider to an overseas cloud computing provider, the place of supply shall be outside India. Such services thus qualify as an export of services under Section 2(6) of the IGST Act, provided all conditions for export of services are met. • The Indian data hosting service provider is not considered an intermediary. They deliver the data hosting services on a principal-to-principal basis, directly to the cloud computing providers. • The data hosting services are not provided in relation to goods made available by the recipient (the overseas cloud computing provider) to the service provider. The hardware and infrastructure used for hosting services are either owned or leased by the Indian data hosting provider, which independently manages them. Therefore, Section 13(3)(a) of the IGST Act, which applies to services in relation to goods physically made available by the recipient, does not apply. • The data hosting services are comprehensive in nature, encompassing IT infrastructure management, hardware monitoring, and security services. These are not directly linked to immovable property, and thus, the place of supply cannot be determined under Section 13(4) of the IGST Act. • Since the specific provisions in Sections 13(3) to 13(13) of the IGST Act are not applicable to data hosting services, the place of supply is determined based on the default provision under Section 13(2). Therefore, the place of supply is the location of the recipient of services, which, in this case, is the overseas cloud computing provider. **Dhruva Comments:** *There have been past disputes on data centres providing services to overseas corporations, wherein the authorities contend such services are provided in relation to immovable property and hence the place of supply shall be the location of such data centres. The Circular supports in affirming the position that when the services are comprehensive in nature, the place of supply shall be the location of recipient of service.*
IGST Refund Regularisation[4]	• Rule 96(10) of the CGST Rules restricts exporters from claiming refunds of IGST on exports if they have availed of concessional or exempt benefits on the inputs used for those exports, under specific notifications. • Effective from October 23, 2017, Notification No. 16/2020-CT introduced an Explanation that provides relief to exporters. It states that if an exporter has availed an exemption from

[3] Circular No. 232/26/2024-GST, dated September 10, 2024
[4] Circular No. 233/27/2024-GST, dated September 10, 2024



Issue	Clarification
	Basic Customs Duty (BCD) alone, but subsequently paid IGST and Compensation Cess on the inputs, it will not be considered a violation of the provisions of Rule 96(10). • It has been clarified that if an exporter initially imported inputs without paying IGST and Compensation Cess under Notification No. 78/2017-Customs or 79/2017-Customs but later paid these taxes along with applicable interest, and the bill of entry was reassessed, such exporters will not be treated as having violated Rule 96(10). This ensures that these exporters remain eligible to claim IGST refunds on their exports. **Dhruva Comments:** *Since its introduction, Rule 96(10) has undergone numerous amendments, primarily aimed at preventing exporters from claiming dual benefits on both export and import of goods. These frequent changes and varying interpretations have led to significant disputes. This clarification seeks to reduce litigation and streamline past positions by requiring exporters to regularize their status through the payment of IGST/Cess with applicable interest on duty-free imports. Significantly, during the 54th GST Council Meeting, it was recommended to omit Rule 96(10), along with Rules 89(4A) and 89(4B), prospectively. This move is expected to provide additional relief and benefits to the exporter community, marking a positive step toward simplifying the GST framework for exporters.*



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