

100% ITC matching upon notification of Section 16(2)(aa)

- Rule 36(4) notified from 9th October 2019 provided for restriction on ITC availment upto 120% of the ITC reflected in GSTR-2A/B. This was later reduced to 110% from 1st January 2020 and 105% from 1st January 2021.
- Through Finance Act, 2021, **Section 16(2)(aa)** is proposed to be inserted which would provide for **100% matching** between GSTR-2B and GSTR-3B.
- It has been clarified that once this 16(2)(aa) gets notified, **Rule 36(4)** would be **amended** to restrict ITC to the extent the invoices/ debit notes are communicated to the registered person in FORM GSTR-2B.

Interest on ITC availed but not utilized not to be levied

- Interest is to be paid by taxpayer only on **ineligible ITC availed and utilised** at the rate of **18% w.e.f. 1st July 2017** under Section 50(3) of the CGST Act. On **ineligible ITC availed but not utilised**, no interest would be applicable.

Transfer of CGST/IGST Cash ledger balances between two GSTINs having same PAN

- **Unutilized balance in CGST and IGST** cash ledger may be allowed to be **transferred** between **distinct persons** (entities having same PAN but registered in different states), without going through the refund procedure, subject to certain safeguards.

Clarification on scope of intermediary services

- The government had **earlier issued a circular** 107/26/2019 dt.18/07/2019 clarifying the doubts related to **supply of IT enabled services and intermediaries**. However, such **circular was withdrawn** later due to numerous representations against it.
- Now the government plans to issue **a fresh circular** once again for explaining the scope of intermediary services.

Interpretation of “merely establishment of distinct persons” to be clarified from “export of services” perspective

- In many a case, the department **used to deny the benefit of export of services** due to the reason that, the person incorporated in India and that outside India belonged to the **same group of companies**. This was irrespective of the fact that they were **separate legal entities**.
- Now it has been clarified that they would not be treated as merely establishments of distinct persons and would be **considered under export of services**.

No requirement of carrying physical copies of E-invoices

- It is proposed to be clarified that during the time of transportation there would be **no requirement of carrying physical copies of E-invoices** generated under Rule 48(4) of the CGST Rules, 2017

Refund not to be denied if export duty is not payable

- Under Section 54(3) **refund of accumulated ITC is denied** if any goods are subject to export duty. In a number of cases **export duty** had been notified as **NIL/exempt**. The department use to deny refund under Section 54(3) on the ground that NIL rate of export duty is also a kind of export duty.
- Now it is proposed to be clarified that **refund would be restricted only when export duty** is required to be **paid** on the relevant goods.

Date of debit note and not underlying invoice to be taken for limitation under Section 16(4)

- Section 16(4) restricts availment of ITC upto the due date of filing September return of subsequent financial year or actual date of filing of annual return. This is based on the date of document issued by the supplier.
- The **date of debit note, and not the date of underlying invoice** would be considered for the purpose of determining the aforesaid **period of limitation** prescribed under **Section 16(4)** of the CGST Act.
- This has been notified **from 01st January,2021** vide Finance Act 2020.

Removal of ambiguity on refund of taxes paid under the wrong head

- There has been a lot of confusion regarding the **procedure and time limit** for filing of **refund for wrongly taxes paid** as CGST/SGST instead of IGST and vice versa.
- Provisions for **removal of such ambiguities** is **proposed to be notified** through amendment in the CGST Rules, 2017

Mandatory Aadhar authentication for refund claim and revocation of cancellation

- **Aadhaar authentication** of registration to be made mandatory for being eligible for

filing refund claim and application for **revocation of cancellation of registration**.

Late fees of GSTR-1 to be collected through next GSTR-3B

- Even though the GST law prescribes late fees for GSTR-1 the same was not auto populated on the GST portal till now
- It is now proposed that the **late fees for GSTR-1** would be auto populated in the **next open GSTR-3B**.

Refund only in bank account linked with correct PAN

- **Refund** to be disbursed in the **bank account**, which is **linked with same PAN** on which registration has been obtained under GST.

Restriction on filing GSTR-1 if GSTR-3B of previous month not filed

- Currently Rule 59(6) of the CGST Rules does not permit filing of GSTR-1 if a registered person does not file GSTR-3B for preceding 2 months/preceding quarter
- With effect from 01.01.2022 a registered person **shall not be allowed to furnish FORM GSTR-1** if he has **not furnished** the return in **FORM GSTR-3B** for the **preceding month** itself.

Form ITC-04 Relaxations

Turnover in Preceding FY	Frequency of ITC-04
Upto 5 crores	Annual
Above 5 crores	Once in 6 months

Petroleum Products to remain outside GST Ambit

- Hon'ble High Court of Kerala had directed the GST Council to **consider the coverage of petroleum products** within the ambit of GST.
- After due deliberation, the Council was of the view that it is **not appropriate** to do so at this stage.

Restaurant related measures

- With a few exceptions, **GST would be leviable on E-commerce food delivery operators** like Zomato, Swiggy etc. and **not the restaurant** delivering through them.[w.e.f 1st January, 2022]

- Services by **cloud kitchens**/central kitchens are covered under 'restaurant service' and attract **5% GST [without ITC]**.
- **Ice cream parlor** sells already manufactured ice- cream. Such supply of ice cream by parlors would attract GST at the **rate of 18%**.
- **Alcoholic liquor** for human consumption is **not food and food products** for the purpose of the entry prescribing **5% GST rate on job work services** in relation to food and food products.

Transportation of passengers through e-commerce platforms like Uber, Ola etc.

- Earlier, only services of transportation of passengers provided by a radio-taxi, motorcab, maxicab and motor cycle were covered under Section 9(5) wherein the person liable to pay taxes was the e-commerce operator
- Now, services of **transport of passengers**, by **any type of motor vehicles** through **e-commerce platform** would be covered under Section 9(5) and the person **liable to pay** tax would be such e-commerce operator

Correction in Inverted Duty structure in Footwear and Textiles sector

- GST rate changes in order to **correct inverted duty structure, in footwear and textiles** sector, as was discussed in earlier GST Council Meeting and was deferred for an appropriate time, will be implemented with effect **from 01.01.2022**.

Health Care related exemptions

- Extension of existing concessional GST rates (currently valid till 30 September, 2021) on following Covid-19 treatment drugs, up to 31 December, 2021, namely:
 - i. Amphotericin B -nil
 - ii. Remdesivir – 5%
 - iii. Tocilizumab -nil
 - iv. Anti-coagulants like Heparin – 5%
- Reduction of GST rate to 5% on more Covid-19 treatment drugs, up to 31 December, 2021 namely
 - i. Itolizumab
 - ii. Posaconazole
 - iii. Infliximab
 - iv. Favipiravir

- v. Casirivimab & Imdevimab
- vi. 2-Deoxy-D-Glucose
- vii. Bamlanivimab & Etesevimab
- Life-saving drugs Zolgensma and Viltepso used in treatment of Spinal-Muscular Atrophy exempted from GST when imported for personal use
- GST rate on Keytruda medicine for treatment of cancer reduced from 12% to 5%

Extension of Compensation Cess till April 2026

- The applicability of compensation cess has been extended till April 2026
- The revenue collections from Compensation Cess in the period beyond June 2022 till April 2026 would be exhausted in repayment of borrowings and debt servicing made to bridge the gap in 2020-21 and 2021-22

Changes for the industry engaged in supply of mentha oil

- Supply of mentha oil from unregistered person has been brought under reverse charge
- Council has also recommended that exports of Mentha oil should be allowed only against LUT and consequential refund of input tax credit

Clarification on GST rate relating to goods

- Pure henna powder and paste, having no additives, attract 5% GST rate under Chapter 14.
- Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues, falling under HS code 2303 attract GST at the rate of 5%.
- All laboratory reagents and other goods falling under heading 3822 attract GST at the rate of 12%.
- Scented sweet supari and flavored and coated illachi falling under heading 2106 attract GST at the rate of 18%
- Carbonated Fruit Beverages of Fruit Drink" and "Carbonated Beverages with Fruit Juice" attract GST rate of 28% and Cess of 12%. This is being prescribed specifically in the GST rate schedule.
- Tamarind seeds fall under heading 1209, and hitherto attracted nil rate irrespective of use. However, henceforth they would attract 5% GST rate (w.e.f. 1.10.2021) for use other than sowing. Seeds for sowing will continue at nil rate.
- External batteries sold along with UPS Systems/ Inverter attract GST rate applicable to batteries [28% for batteries other than lithium-ion battery] while UPS/inverter would attract 18%.
- GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, during the period from 1.7.2017 to 31.12.2018, in the same manner as has been prescribed for the period on or after 1 January 2019.

- Due to ambiguity in the applicable rate of GST on Fibre Drums, the supplies made at 12% GST in the past have been regularised. Henceforth, a uniform GST rate of 18% would apply to all paper and paper board containers, whether corrugated or noncorrugated.
- Distinction between fresh and dried fruits and nuts is being clarified for application of GST rate of “nil” and 5%/12% respectively;
- It is being clarified that all pharmaceutical goods falling under heading 3006 attract GST at the rate of 12% [not 18%].
- Essentiality certificate issued by Directorate General of Hydrocarbons on imports would suffice; no need for taking a certificate every time on inter-state stock transfer

Changes for the industry engaged in supply of Brick Kilns

- Brick kilns would be brought under special composition scheme with threshold limit of Rs. 20 lakhs, with effect from 1.4.2022
- Bricks would attract GST at the rate of 6% without ITC under the scheme.
- GST rate of 12% with ITC would otherwise apply to bricks.

GST rate changes in relation to Goods [w.e.f 1.10.2021 unless otherwise stated]

S. No.	Description	From	To
1	Retro fitment kits for vehicles used by the disabled	Appl. rate	5%
2	Fortified Rice Kernels for schemes like ICDS etc.	18%	5%
3	Biodiesel supplied to OMCs for blending with Diesel	12%	5%
4	Ores and concentrates of metals such as iron, copper, aluminum, zinc and few others	5%	18%
5	Specified Renewable Energy Devices and parts	5%	12%
6	Cartons, boxes, bags, packing containers of paper etc.	12%/18%	18%
7	Waste and scrap of polyurethanes and other plastics	5%	18%
8	All kinds of pens	12%/18%	18%
9	Railway parts, locomotives & other goods in Chapter 86	12%	18%
10	Miscellaneous goods of paper like cards, catalogue, printed material (Chapter 49 of tariff)	12%	18%
11	IGST exemption on goods supplied at Indo-Bangladesh Border haats	Appl. rate	Nil
12	Unintended waste generated during the production of fish meal except for Fish Oil	Nil (for 1.7.2017 to 30.9.2019)	

Clarification on GST rate relating to services

- Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities' is exempt from GST
- Overloading charges at toll plaza are exempt from GST being akin to toll.
- The services by way of grant of mineral exploration and mining rights attracted GST rate of 18% w.e.f. 01.07.2017.
- Admission to amusement parks having rides etc. attracts GST rate of 18%. The GST rate of 28% applies only to admission to such facilities that have casinos etc

GST changes in relation to rates and scope of exemption on Services [w.e.f 1.10.2021 unless otherwise stated

S. No.	Description	From	To
1	Validity of GST exemption on transport of goods by vessel and air from India to outside India is extended upto 30.9.2022.	-	NIL
2	Services by way of grant of National Permit to goods carriages on payment of fee	18%	Nil
3	Skill Training for which Government bears 75% or more of the expenditure [presently exemption applies only if Govt funds 100%].	18%	Nil
4	Services related to AFC Women's Asia Cup 2022.	18%	Nil
5	Licensing services/ the right to broadcast and show original films, sound recordings, Radio and Television programmes [to bring parity between distribution and licencing services]	12%	18%
6	Printing and reproduction services of recorded media where content is supplied by the publisher (to bring it on parity with Colour printing of images from film or digital media)	12%	18%
7	Exemption on leasing of rolling stock by IRFC to Indian Railways withdrawn.	Exempt	Taxable

Way forward for the GST Council

- The Council decided to set up a GoM to examine the issue of correction of inverted duty structure for major sectors; rationalize the rates and review exemptions from the point of view of revenue augmentation, from GST.
- It was also decided to set up a GoM to discuss ways and means of using technology to further improve compliance including monitoring through improved e-way bill systems, e-invoices, FASTag data and strengthening the institutional mechanism for sharing of intelligence and coordinated enforcement actions by the Centre and the States.
- GST Council has also recommended amendments in certain provisions of the Act and Rules.

This publication contains information for general guidance only. It is not intended to address the circumstances of any particular individual or entity. Although the best of endeavour has been made to provide the provisions in a simpler and accurate form, there is no substitute to detailed research with regard to the specific situation of a particular individual or entity. S. Khaitan & Associates or any of its officials do not accept any responsibility for loss incurred by any person for acting or refraining to act as a result of any matter in this publication



OFFICE : MOOKERJEE HOUSE,
17, BRABOURNE ROAD, 2ND FLOOR,
KOLKATA - 700001

PHONE NO : 03340687062, +919831912725

EMAIL ID : office@cakhaitan.com
shubham@cakhaitan.com

WEBSITE : www.cakhaitan.com