

RECENT AMENDMENTS IN GST LAWS



04th April 2020

SPECIAL PROCEDURE FOR TAXPAYERS IN DADRA NAGAR HAVELI AND DAMAN DIU

Taxpayer having principal place of business in the merged Union territory of Daman and Diu and Dadra and Nagar Haveli from the 27th January, 2020 onwards have to follow following procedure;

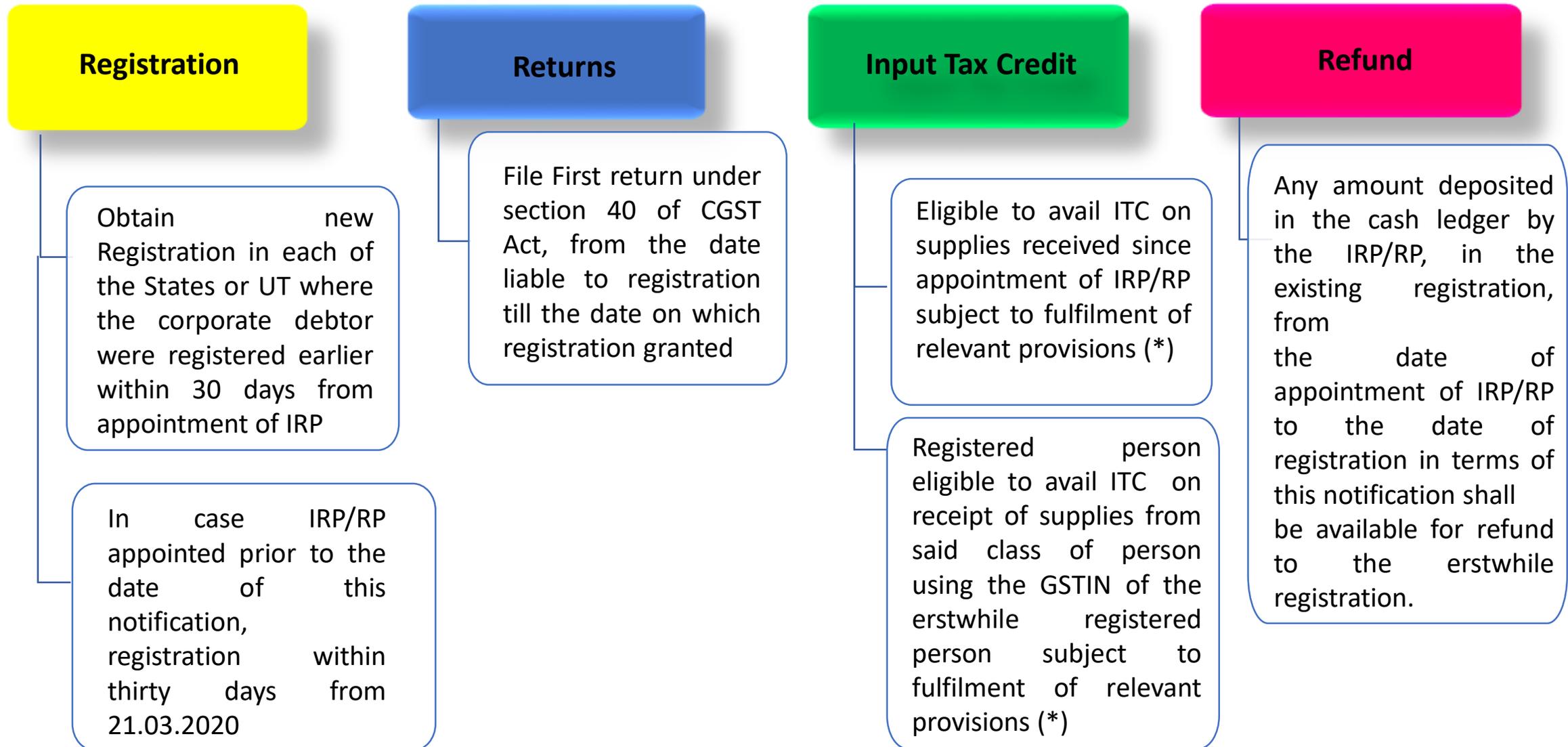
Ascertain Tax Period for filing return and paying tax -
January 2020 - 1st January, 2020 to 25th January, 2020
February 2020 - 26th January, 2020 to 29th February, 2020

Irrespective of Tax charged on the Invoices issued from 26th January 2020 till the transition date i.e. 31st May 2020 appropriate applicable tax to be paid in return under section 39 of CGST Act

Procedure in case an Option is exercised to transfer ITC from the erstwhile UT (Transferor) to merged UT(Transferee)

- Intimation to jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, within one month of obtaining new registration
- ITC to be transferred on the basis of the balance in ECL upon filing of the return in the erstwhile Union territory of Daman and Diu, for the tax period immediately before the transition date
- Transferor GSTIN to debit ITC in FORM GSTR-3B and the transferee GSTIN shall credit the equal amount of ITC in FORM GSTR-3B

SPECIAL PROCEDURE FOR PERSONS WHO ARE CORPORATE DEBTORS UNDERGOING INSOLVENCY PROCEEDINGS UNDER IBC CODE



(*) except the provisions of sub-section (4) of section 16 of the said CGST Act, 2017 and sub-rule (4) of rule 36 of the CGST Rules, 2017

UPDATES ON LAW & PROCEDURE

Composition Dealer: Furnishing of Form GSTR-1 and Form GST CMP-08 are not required for the F.Y. 2019-20 if returns in Form GSTR-3B have been furnished

GSTR-9 Annual Return: Due Date extended for the F.Y. 2018-19 to **30th June, 2020**

Exemption from issuing of e-invoice:

- Banking company
- Financial Institute
- NBFC's
- GTA
- Person providing passenger transportation service
- Person providing services by way of admission to exhibition of cinematograph films in multiplex

Date for introduction of E-Invoicing has been extended to 1st October 2020 for all other persons whose turnover in a F.Y. is more than Rs. 100 crores

Exemption from issuing of dynamic QR code:

- Banking company
- Financial Institute
- NBFC's
- GTA
- Person providing passenger transportation service
- Person providing services by way of admission to exhibition of cinematograph films in multiplex,
- OIDAR

Date of introduction of QR Code to supplies made by B2C is extended to 1st October 2020 for all persons whose turnover in a F.Y. is more than Rs. 500 crores

GST REGISTRATION FROM 1ST APRIL 2020 - AADHAAR AUTHENTICATION

Exemption granted from Aadhaar authentication to the following persons:

- Person who is not a citizen of India
- Person who is not:
 - Individual
 - Authorized signatory of all types
 - Managing and Authorized partner
 - Karta of a HUF

Aadhaar authentication mandatory for the following persons:

- Authorised signatory of all types
- Managing and Authorised partners of a partnership firm
- Karta of an Hindu undivided family

**Eligible person to undergo
Aadhaar Authentication
from 1st April 2020**

CENTRAL GOODS AND SERVICE TAX (THIRD AMENDMENT) RULES, 2020

Rule 8(4A)

- Insertion - Aadhaar Authentication mandatory for grant of registration (w.e.f. 1st April 2020)

Proviso to Rule 9(1)

- Insertion - Physical verification of the principle place of business within 60 days from the date of application of registration on failure to undergo Aadhaar Authentication before grant of Registration

Rule 25

- Substituted with new – Now, physical verification will be done in certain cases and verification report along with other documents including photographs will be uploaded by proper officer in FORM GST REG-30 within 15 working days following the date of such verification

Proviso to Rule 80(3)

- Insertion - Aggregate Turnover for F.Y 2018-19 exceeding Rs. 5 Crores than the registered person shall get his accounts audited and shall furnish certified copy of audited annual accounts and reconciliation statement in FORM GSTR-9C through the common portal or facilitation centre as notified

CENTRAL GOODS AND SERVICE TAX (THIRD AMENDMENT) RULES, 2020

Rule 43(1)(c)

- Substitution - Procedure prescribing reversal of input tax credit in respect of capital goods partly used for affecting taxable supplies and partly for exempt supplies

Rule 86(4A)

- Insertion - Refund amount claimed as tax wrongly paid or paid in excess for which debit has been made from credit ledger, if found admissible shall be re-credited by proper officer in Form GST PMT-03 by proper officer

Rule 89(4)(C)

- Substitution - For the purpose of calculation of Turnover of zero-rated supply of goods without payment of tax, zero rated supply turnover has been restricted to value of such zero rated supply of goods made during the relevant period or the value which is 1.5 times the value of like goods supplied by similar supplier whichever is less

GSC Comments: No Powers given under the GST Act for issuance of Rules imposing condition/restriction on claiming refund in respect of zero rated supply of goods

CENTRAL GOODS AND SERVICE TAX (THIRD AMENDMENT) RULES, 2020

Rule 92(1A)

- Insertion - Refund Order by proper officer in **Form RFD-06** sanctioning the amount in cash, proportionate to the amount debited in cash against any outstanding demand under the Act or under any existing law and the balance amount refundable for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue **FORM GST PMT-03** re-crediting the said amount as Input Tax Credit in ECL

Rule 96B

- Insertion - Recovery of Refund of Unutilized Input Tax Credit or Integrated Tax paid on export of goods alongwith interest where export proceeds not realised within period allowed under FEMA, 1999 to the extent of non-realisation of sale proceeds in case of failure to deposit the amount except if the RBI writes off the requirement of realisation of sale proceeds. The person to give undertaking in Form GST RFD-01 to deposit refund alongwith interest in case of non-receipt of foreign remittance.

Explanation to Rule 96(10)(b)

- Insertion of an explanation w.e.f 23.10.2017 in Rule 96(10) (b) of CGST Rules 2017 to effect that benefit of these notifications shall not be considered to be availed only where the registered person has paid IGST and Compensation cess on inputs and has availed exemption of only BCD under the said Notifications.

GSC Comments: In view of this explanation, now eligible registered person can opt for refund with payment of tax.

Due dates notified

Sr. No.	Return	Aggregate Turnover in preceding FY or current FY	Months/ Quarter		Due dates	Notification No./2020-CT dated 23.03.2020
1	GSTR-1	Up to 1.5 crores	Quarter	Apr to Jun'20	31.07.2020	27
2			Quarter	Jul to Sep'20	31.10.2020	27
3		More than 1.5 crores	Months	Apr'20 to Sep'20	11 th day of each month succeeding such month	28
4	GSTR-3B	Up to 5 crores	Months	Apr'20 to Sep'20	*22 nd day of each month succeeding such month	29
5			Months	Apr'20 to Sep'20	**24 nd day of each month succeeding such month	29
6		More than 5 crores	Months	Apr'20 to Sep'20	20 th day of each month succeeding such month	29

*For taxpayers having aggregate turnover up to Rs 5 crore and whose principle place of business is located in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep

**For taxpayers having aggregate turnover up to Rs 5 crore and whose principle place of business is located in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi

Clarification in respect of apportionment of ITC in cases of business reorganization

Pursuant to demerger, ITC is apportioned in the ratio of value of assets of new units. However, it was not clear as to whether such value of assets has to be considered at State Level or at all-India Level.

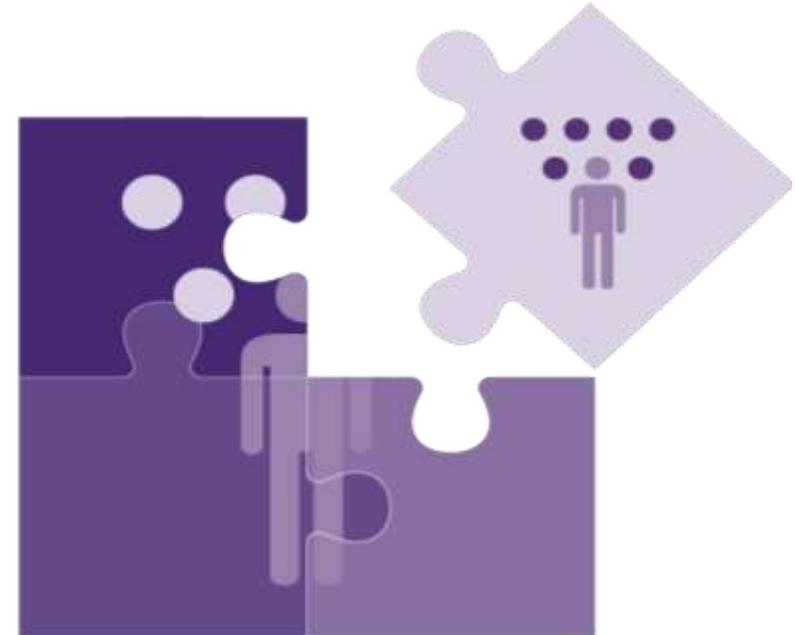
- It has been clarified that **value of assets** of the new units is to be taken **at the State level** (in light of distinct person) and **not at all-India level**.

Whether transferor is required to file **FORM GST ITC-02** in all states where it is registered?

- It is clarified that, the transferor is required to file **FORM GST ITC-02** only in **those States** where both **transferor** and **transferee** are **registered**.

ITC apportionment formula (in Rule 41(1) of CGST Rules, 2017) explicitly mentions 'demerger'. Doubts have arisen whether it covers other forms of business hive offs?

- It is clarified that, formula is applicable for all forms of business reorganization that results in partial transfer of business assets along with liabilities



11 Clarification in respect of apportionment of ITC in cases of business reorganization

Doubts has been arisen whether formula for apportionment of ITC (in Rule 41(1) of CGST Rules, 2017) needs to be applied separately for each heads of ITC viz. CGST/SGST/IGST/Cess?

- It is clarified that, the ratio of value of assets, need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST) but shall be applied to the total amount of unutilized ITC (i.e. CGST + SGST/UTGST + IGST)
- Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee
- Transferor is at liberty to determine the amount to be transferred under each tax head subject to the condition that, total amount of ITC transferred to the transferee does not exceed the amount of ITC to be transferred

Clarification in respect of apportionment of ITC in cases of business reorganization

- Formula for ITC apportionment (in Rule 41(1) of CGST Rules, 2017) contains elements such as 'unutilised balance of ITC of the transferor' and 'ratio value of assets'. Doubts have been raised to identify **relevant date** for calculating such 'unutilised balance of ITC' and 'ratio value of assets'

Particulars	Clarification	Relevant Date
Unutilised balance of ITC of transferor	It is clarified that, conjoint reading of section 18(3) of the CGST Act along with rule 41(1) of the CGST Rules would imply that the apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC – 02 by the transferor	Date of filing FORM GST ITC-02 by transferor
Ratio value of assets	Section 232(6) of Companies Act, 2013 requires indication of 'appointed date of demerger'. It is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under rule sub-rule (1) of rule 41 of the CGST Rules, the ratio of the value of assets should be taken as on the "appointed date of demerger"	Appointed date of demerger

Clarification in respect of Companies undergoing Insolvency Proceedings

- GST dues for the period prior to Insolvency proceedings shall be treated as an operational debt and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT
- GST Registration of such a corporate debtor can be suspended by the proper officer. Officer may suspend the registration if need arises. In case of cancellation, such cancellation may be revoked
- Interim Resolution Professionals shall be liable to file returns only for the period of Insolvency proceedings and not for pre-CIRP period

Clarification in respect of Companies undergoing Insolvency Proceedings

- The said corporate debtor shall be treated as a distinct person of the said registered and shall be required to take a separate registration in lines with Notification 11/2020-CT dated 21.03.2020
- Interim Resolution Professionals shall ensure that the returns during the CIRP period are furnished and proper payment of tax is made subsequently in compliance with all the provisions of the GST law during CIRP period
- While furnishing of first return, Interim Resolution Professionals can claim credit in respect of invoices of supplies received during the CIRP even if they contain GSTIN of erstwhile registration subject to conditions of Chapter V of the CGST Act except Section 16 (4) and Rule 36 (4)

Clarification in respect of Companies undergoing Insolvency Proceedings

- While furnishing of first return, Interim Resolution Professionals can claim credit in respect of invoices of supplies received during the Insolvency proceedings even if they contain GSTIN of erstwhile registration subject to conditions of Chapter V of the CGST Act except Section 16 (4) and Rule 36 (4)
- Registered persons receiving supplies from the Corporate debtors shall, for the period from the date of appointment of Interim Resolution Professionals till the date of registration or 30 days from 21.03.2020 whichever is earlier is eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to conditions of Chapter V of the CGST Act except Section 16 (4) and Rule 36 (4).
- In case Interim Resolution Professionals has deposited amount in the cash ledger of the erstwhile registered person in Pre-CIPR period, then facility of refund for such deposit shall be available even though GTSTR-3B/GSTR-1 have not been filed for said period.

Abbreviations

- GST – Goods and Services Tax
- UT – Union Territory
- ITC – Input Tax Credit
- ECL – Electronic Credit Ledger
- FEMA, 1999 – Foreign Exchange Management Act, 1999
- IBC – Insolvency and Bankruptcy Code, 2016
- NCLT – National Company Law Tribunal
- CIRP – Corporate Insolvency Resolution Process

Disclaimer

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