

GST Guidance Note 11

Transitional Provisions

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11.01 Migration of existing tax payers to GST

Every taxpayer registered for any one of the taxes getting subsumed in GST like Central Excise, Service Tax and State VAT is liable for provisional registration under GST. Post provisional registration as above, the tax payer will have to submit prescribed information and comply with prescribed conditions. On successful submission of the said information and compliance of conditions final registration certificate will be granted.

A person who has been granted provisional registration for the reason of being already registered under any of the pre-GST taxes, but who is not liable for registration under GST may apply for cancellation of GST registration within a period of thirty days from the appointed day. [Rule 24(4) of the CGST rules] However, vide notification no. 3/2018- Central tax dated 23.01.2018, government has extended the date for application of cancellation of registration upto 31.03.2018

11.02 Process of migration

- GSTN opened the portal for migration of State VAT registrations to GSTN on 8/11/16
- Different days were allocated for migration of registrants of different states
- On slated dates, the existing registrant had to log on to the portal for enrolment after filling up a basic form and providing a registered mobile number and email id
- The applicant received a user id and password for enrolment
- The user id given is essentially the provisional GSTIN that will be so labelled once the law is enacted
- Thereafter (after enactment) the registrant will have a period of three months to upload the required documents in FORM GST REG-26, for getting a permanent GSTIN.
- Similarly, the migration of existing Central Excise Registrations started from 1/1/17 and Service tax registrants from 9/1/17.
- If the information and particulars furnished in FORM GST REG-26 are found to be correct and complete, final registration certificate in FORM GST REG-06 shall be issued.

11.03 Transfer of unutilized credit balances of various taxes like Central Excise Duty, Service Tax, VAT etc that have subsumed under GST

The Cenvat credit, credit of VAT and Entry Tax carried forward in the return relating to the period ending with the day immediately preceding the date of transition (appointed date) are eligible to be carried to the GST provided that the said amount is admissible under GST law also. This is explained in the table below-

<i>Treatment of credit Balance in last return under earlier law</i>		
On appointed day	Under GST	Condition
Excise	shall be carried forward as Central Tax	<ul style="list-style-type: none"> • If same is admissible both under earlier law and GST law • Credit is lying in balance in return for the period ending the day before appointed date under earlier law • The claimant files declaration in Form GST TRAN-1 within ninety days of the appointed day, giving details of stock held on appointed day and in case of capital goods of amount of tax or duty availed & utilized and to be availed & utilized.
Service Tax	shall be carried forward as Central Tax	
VAT	shall be carried forward as State Tax	
Entry Tax	shall be carried forward as State Tax	
Centralized Registration	<ul style="list-style-type: none"> • shall be carried forward as Central Tax • May transfer to any of registered taxable person having same PAN 	
ISD	shall be carried forward as Central Tax	
Unavailed credit of capital goods	Credit which have not been availed fully in erstwhile law shall be available	

11.04 Transfer of credits of cesses such as Education Cess, Secondary and Higher Education Cess, Swatch Bharat Cess and Krishi Kalyan Cess

The Transitional provisions under the CGST Act allow carryover of only the Cenvat Credit and Credit of eligible duties mentioned in the explanations given at the end of section 140. Education Cess & Secondary and Higher Education Cess are not mentioned there. Therefore these will not be carried forward as credit of these cesses is not allowed under GST.

Swatch Bharat Cess (SBC) and Krishi Kalyan Cess (KKC) will not be eligible for carry forward to GST regime as credit of these cesses is not allowed under GST.

The cesses will also not be leviable under GST to the extent they are levied as duties of excise (except on excluded items) or Service Tax or as a surcharge.

The Authority for Advance Ruling (AAR-Maharashtra) in the matter of Kansai Nerolac Paints Limited {2018-TIOL-09-AAR GST; [2018] 93 taxmann.com 58 (AAR-Maharashtra)} has held that carried forward KKC in electronic credit ledger cannot be considered as admissible Input credit. While pronouncing the ruling, the authority made reference to an FAQ issued by the CBEC explaining non-availability of input tax credit of SBC. Thus the present ruling of AAR will apply to SBC also.

11.05 Illustration of credits that will not be carried forward

Tax credit scheme under GST law is more liberal than the existing laws. Therefore, possibility of such situations is low. Credit of Excise Duty on products going out of GST will lapse at the hands of suppliers of GST goods or services. For example, airlines will not be able to carry forward the credit as Aviation Turbine Fuel (ATF) is out of GST ambit.

11.06 Transfer of credit of taxes paid on goods in stock in certain situations

There will be several situations wherein a person was not required to pay either Central Excise Duty or Service Tax or VAT on its outward supply, however under GST such person or premises of a person has become liable to pay GST.

In these situations it is necessary to make provisions for allowing the person to take credit of taxes that have been paid in respect of inputs lying in stock and inputs contained in semi-finished or finished goods lying in stock. Migration of such credits has also been contemplated and provided for in the transition provisions,

Such situations can occur in following situations –

- a. Person manufacturing exempted goods or engaged in provision of exempted services or person selling goods that are exempt under earlier regime but taxable under GST
- b. Person engaged in manufacturer of non-exempted goods and exempted goods or provision of non-exempted service as well as exempted service that have entirely become taxable under GST.
- c. Credit of Excise Duty paid on goods lying in stock with retailers, warehouses, wholesalers etc.
- d. Persons switching over from composition schemes
- e. Persons providing services like works contract etc. and following composition/abatement schemes that were subject to condition of non availment of credit.

The provisions in this regard that have been provided for in GST law are encapsulated in the table below-

Treatment of tax credit held in inputs, WIP in stock, inputs contained in final product		
Situation	Transition to GST	Condition
Person who was not liable under earlier law	<ul style="list-style-type: none"> input tax credit of eligible taxes allowed Eligible duties and taxes include Central Excise Duty, Additional Duty of Excise (textile and textile articles), Additional Duty of Excise (goods of special importance), NCCD, CVD, SAD and Service Tax. Amongst state taxes these include VAT and Entry Tax. Eligible taxes does not include ED cess, SHE cess, NCCD, KKC 	<ul style="list-style-type: none"> Credit should be in respect of inputs held in stock and inputs contained in semi-finished goods and finished goods held in stock on cut-off day(appointed day) The taxable person is eligible for input tax credit on such inputs under GST law. Should be in possession of invoice or other documents evidencing payment of duty and the relevant invoices / other documents are not issued earlier than 12 months preceding the appointed day Such inputs are used or intended to be used for making taxable supplies The supplier of service is not eligible for any abatement under GST Law.
First stage dealer		
Second stage dealer		
Importer		
WC availing benefit u/n no.26-2012		
Person who was doing exclusively business of exempted goods/ services		
Person who was engaging in business of exempted & taxable goods/ services		
Person who switching over from composition scheme		

11.07 Manner of availment of credit of embedded Excise Duty on goods procured from dealers on such invoices which are not the duty paying documents for Excise Duty

Rule 117(4) of the CGST rules provide that a taxpayer who is not in possession of any document evidencing payment of central excise duty shall be allowed tax credit at the rate of sixty percent of the central tax applicable if GST (CGST+SGST or IGST as the case may be) is payable at the rate of 18 per cent or more. If GST is payable at a rate which is less than 18 percent, forty percent of the central tax applicable will be available as input tax credit. The amount will be credited to electronic credit ledger after payment of applicable central tax. The window for claiming tax credit will be

open for six tax periods from the appointed date. The details of such stocks will have to be submitted in a statement in FORM GST TRAN 2 at the end of each of six tax periods.

Government vide Order No.1/2018- Central tax dated 28.03.2018 has extended the due date for furnishing statement in FORM GST TRAN-2 till 30.06.2018

11.08 Credit of state taxes in cases linked to production of certain prescribed forms in current regime

For the goods claimed to have been sold in the course of inter-State trade and commerce against form 'C' or penultimate sale of goods against form 'H' or subsequent sale claimed to have been made while goods were in inter-state transit and stock transfers against Forms 'E1', 'E2' or 'F', the claim of carry forward of credit to GST regime will be allowed only when underlying forms 'C', 'H', 'E1' or 'E2', 'F' as the case may be have been received by the seller. A period of ninety days from the cut-off date will be allowed for producing these forms.

The claimant will have to file declaration in Form GST TRAN-1 giving details of supplies against forms during the financial year relating to relevant return. The form calls for information since 1st April 2015 till 30th June 2017. The declaration shall contain the serial number and value of declarations in Forms C and/or F and Certificates in Forms E, H or Form I specified in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 submitted by the applicant in support of the claims above.

If the claimant is not able to produce these forms within stipulated time, underlying credit will not be allowed to be carried forward to GST regime. However, the seller will be allowed to claim refund of such embedded tax from respective sales tax authorities.

11.09 Credit on capital goods installed in the premises of suppliers

There are no provisions that will enable a person, not entitled to take credit of taxes paid on capital goods installed in their premises before the appointed date, to avail credit of such taxes after the appointed date even if the person is required to discharge GST on supplies made using such capital goods. For example, a retail shop will not be entitled to credit of Excise Duty paid on capital goods like air conditioner, computer, furniture etc. installed in the shop.

11.10 Goods in transit on the appointed date

Several transition provisions have also been provided for goods in transit on appointed date or transactions that were initiated before the appointed date and are concluded after the appointed date. These situations, where the tax treatment before the appointed date has a bearing on the tax treatment on conclusion of the movement or transaction, include –

- a. Movement of goods on which tax is paid starting in pre-GST regime but which reach recipient after the appointed day, i.e. in GST regime.
- b. Input services received on or after the appointed date but tax has been paid before the appointed date
- c. Goods sent for job work before the appointed date but are received back after the appointed date
- d. Goods cleared on payment of tax before the appointed date but returned back after the appointed date
- e. Services where point of taxation (POT) has happened before the appointed date

In brief the transition provisions are as follows-

<i>Treatment of goods in transit or services whose POT has happened before appointed date</i>		
Situation	Treatment under GST	Condition
Receipt of Goods or services after appointed day but Tax has been paid before the appointed date	Eligible taxes and duties paid under the earlier regime shall be eligible for credit – Section 140(5) of the CGST Act	<ul style="list-style-type: none"> • To be accounted within 30 days in the books of account • Credit is admissible both under present & GST law
Exempted goods cleared before appointed date but returned thereafter	No tax to be paid on return	<ul style="list-style-type: none"> • If returned back within 6 months in B2B case; • No Time bar limit for B2C
Situation	Treatment under GST	Condition
Duty paid goods cleared before appointed date but returned under GST.	<p>In case goods are returned by registered person it shall be treated as fresh supply & GST will be applicable</p> <p>In case goods (cleared not earlier than six months from the appointed date) are returned by unregistered person, the registered taxable person will be eligible for refund – Section 142(1) of the CGST Act</p>	Such goods are identified to the satisfaction of proper officer

Services whose POT has happened before appointed date	<ul style="list-style-type: none"> • No tax under GST. • Service Tax to be paid based on POT which has happened before the appointed date – Section 11(1)(b) of the CGST Act 	
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For claim of credit on inputs and input services received on or after appointed day duty or tax on which was paid by the supplier under the earlier law, the claimant will be required to furnish declaration in Form GST TRAN-1 containing details of the name of supplier, serial number and date of invoice or other tax paying document, description, quantity and value of goods or services, the amount of eligible Central and/or state tax and the date on which the receipt of goods or services is accounted for in the books of accounts.

11.11 Goods sent on approval basis returned on or after the appointed day

If such goods have been supplied within six months before the appointed day, and are returned within six months (extendable by another two months by the competent authority) from the appointed day, then no tax will be payable thereon. However if return is happening after six months or extended period then tax will be payable by the person returning such goods.

The person having sent goods on approval will be required to file declaration in Form GST TRAN-1 electronically within sixty days of the appointed day specifying therein details of such goods sent on approval.

11.12 Credit reversed on goods transferred to branches before the appointed date and lying in stock in branches on the appointed date be admissible?

Any amount of credit reversed before the appointed date will not be admissible as credit under SGST Acts.

11.13 Service tax credits reversed prior to the appointed date on the grounds that the payment were not made to the service provider

The credit can be reclaimed if the payment to the supplier is made within 3 months of the appointed date. The claimant will have to separately specify relevant stock in electronic application filed in this behalf. [Section 140(9) of the CGST Act.]

11.14 Goods sent to job worker before the appointed date and returned after the appointed date

The transition provisions in this regard are as follows-

Nature of goods on appointed	Treatment under GST	Conditions
Inputs	<ul style="list-style-type: none"> Not taxable if received within specified time limit ITC to be reversed if not received within specified time limit [Section 141(1) & (2) of the CGST Act 	<ul style="list-style-type: none"> Specified time period – within six month from appointed day; It may be extended for 2 months by competent authority To be returned in same factory from where it was sent Both party to file declaration of stocks lying on appointed day
Semi-finished		
Finished goods	<ul style="list-style-type: none"> Manufacturer has option to remove goods from job-work location on payment of duty in domestic market or without payment of duty for export [Section 141(3) of the CGST Act]. 	

11.15 Pending assessments, adjudications

Proceedings like assessments, adjudications, appeals, revision or review pertaining to the period before the appointed date, whether instituted before or after GST regime, will be disposed of in accordance with the provisions of earlier law. If as a result any amount becomes due to the tax payer, the same will be refunded in cash and if any amount becomes recoverable, same will be recovered as arrear of tax under GST Law. Input tax credits (ITC) of such arrears will not be available under GST.

11.16 Refund of taxes paid under the earlier law

All refund claims pertaining to earlier law, whether filed before or after the GST regime, will be disposed of in accordance with the provision of earlier law and any refund amount accruing to the taxpayer will be paid in cash, in case of Central taxes and in accordance with the provisions of earlier law (in case of State taxes). Where refund claim of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse. Further no refund claim of any tax credit, balance part of which has been carried forwarded under GST, will be allowed.

11.17 Refund claims in respect of services not provided

Refund claim filed after the appointed date for tax deposited under the earlier law in respect of service not provided shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing shall be paid in cash.

11.18 Amount recovered or refunded pursuant to revision of return

Where any return furnished under the earlier law is revised after the appointed date and pursuant to such revision if any amount found to be recoverable, the same will be recovered as arrear of tax. However any amount is found to be refundable, the same shall be refunded in cash.

Various situations in which such refunds can arise and their treatment under GST will be as follows-

Nature of refund	Treatment after GST	Condition
CST	<ul style="list-style-type: none"> shall be refunded as per the provisions of earlier law can be claimed & filed after appointed day If the claim is fully or partially rejected, then the amount so rejected shall stand to lapse It shall be paid in cash 	<ul style="list-style-type: none"> Refund claim must be filed within prescribed time period under earlier law
Goods cleared before appointed day but export made before/after		
Pending refund claims of earlier law on account of appeal, revision, review, finalizing of proceedings		
Tax deposited or payments received before appointed day but refund claims after appointed day		
Amount recoverable or refunded in pursuance of assessment or adjudication proceeding		

11.19 Claims of Cenvat credit pertaining to earlier law

Every proceeding of appeal, review, revision or reference pertaining to input tax credit under the earlier law and any amount found admissible will be paid in cash, in case of Central taxes and in accordance with the provisions of earlier law in case of State taxes. If any amount becomes recoverable, same will be recovered as arrear of tax under GST Law. Input Tax credits (ITC) of such arrears will not be available under GST.

11.20 Miscellaneous

Various transitional situations under GST:

Situation	Under GST	Condition
Long term construction/ works contract	<ul style="list-style-type: none"> If supply done on or after the appointed day GST will be applicable 	
WC-TDS	<ul style="list-style-type: none"> No deduction is required 	<ul style="list-style-type: none"> if payment made on or after appointed day
Progressive or periodic supply	<ul style="list-style-type: none"> No tax 	<ul style="list-style-type: none"> if the payment has been received and tax has been deposited prior to appointed day
Arrear	<ul style="list-style-type: none"> Arrear of tax, interest, fine or penalty of an assessment or adjudication shall be recoverable as arrear of tax under GST 	
Price is revised in pursuance of a contract	<ul style="list-style-type: none"> Supplementary invoice or debit note to be issued for price revised upwards under GST Credit note to be issued for price revised downwards under GST 	<ul style="list-style-type: none"> Within a period of 30 days of such price revision. Taxable person shall be allowed to reduce his tax liability on account of issue of credit note only if the recipient has reduced his input tax credit corresponding to such reduction of tax liability.

11.21 Treatment of tax paid on the goods lying with agents

Where any goods or capital goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent shall be entitled to take credit of the tax paid on such goods or capital goods. Section 142(14) in the SGST Acts provides certain conditions for it. The agent and principal, both will be required to declare details of goods so held in Form GST TRAN-1.

11.22 Unveiled credit on spectrum not reflected in the return on the appointed date

Normally only credit carried forward in a return is allowed under GST. However, there are special provision to allow credit of un-availed credit in respect of capital goods not carried forward in a return provided the said credit was admissible both under the earlier law as well as under the GST. Similar provisions are not there for un-availed credit in respect of spectrum.

Telecom industry has represented for provisions similar to capital goods.

The same is addressed by issuance of Notification 15/2017 –Central Excise (N.T.) dated 12th June 2017, thereby allowing the un-availed Service Tax credit in respect of Spectrum to be availed on the immediately preceding day of the appointed date.

11.23 Credit by ISD

Input tax credit on any service received prior to appointed day by an ISD shall be eligible for distribution as credit under GST even if the invoices is received on or after the appointed day.

11.24 Credit of CST paid on goods/inputs lying in stock on appointed date

There are no provisions that permit availment of CST credit even though post GST inter-State supplies will be subject to full of IGST.
