

Summary of Circulars issued pursuant to 50th GST Council Meeting held on July 11, 2023

S. No.	Circular No	Key clarifications	Comments
1	199/11/2023-GST	<p>In case of common input services procured by HO from 3rd party but attributable to HO and/ or BOs, then two options are available with HO:</p> <ul style="list-style-type: none"> • Distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act • HO can issue tax invoices to the concerned BOs in respect of common input services; and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act <p>It is clarified that ISD mechanism is not mandatory as per the present provisions of GST laws.</p>	<p>Important to note that while clarification is issued as per the present provisions, the GST Council has recommended that ISD should be made mandatory by amending the law on prospective basis.</p>
		<p>In case of internally generated services (i.e. self-supply or HO to BO cross charges), <u>where full input tax credit is available to recipient BO</u>:</p> <ul style="list-style-type: none"> • Value declared on the invoice by HO shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not • If HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by 	<p>The clarification affirms the flexibility of valuation in case of HO – BO transactions where full ITC is available to the recipient BO.</p> <p>Where cross charge is not adopted, the value is deemed nil for the purpose of supply.</p>

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		<p>HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules</p> <p>In case of internally generated services (i.e. self-supply or HO to BO cross charges), where full input tax credit is NOT available to recipient BO:</p> <ul style="list-style-type: none"> the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services 	<p>This clarification should help settle the debate on inclusion of salary costs for HO – BO transactions, which has been subject matter of various contradictory GST advance rulings.</p>
2	194/06/2023-GST	<p>Clarifies regarding applicability of TCS provisions in case of multiple e-commerce operators in one transaction. The liability for TCS would be on the ECO settling the payment (seller side app). In case the seller side app is also the seller, then it will be the buyer side app.</p>	<p>The clarification is aligned to the earlier FAQs on TCS which confirms that TCS is the liability of the ECO settling the payment with the sellers.</p>
3	198/04/2023-GST	<p>Registered person, whose turnover exceeds the prescribed threshold for generation of e-invoice, is required to issue e-invoice even for supplies made to Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc., registered solely for the purpose of TDS as per provisions of section 51 of the CGST/SGST Act</p>	<p>Compliance with this requirement should be checked to ensure that e-invoices are being issued to Government Departments/ PSUs etc</p>

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4	196/04/2023-GST	The activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.	<p>This Circular would be helpful in resolving the disputes on this particular issue.</p> <p>We expect that the rationale of underlying being 'security' to be adopted even for the ESOP matter.</p>
5	193/05/2023-GST	Clarifies regarding various aspects to deal with difference in ITC availed in Form GSTR-3B vis-à-vis GSTR-2A for the period April 1, 2019 to December 31, 2021. The Circular provides that Circular 183 (which provides for self/ CA certification from supplier to enable the recipient to avail credit) can be applied but the ITC will still be subject to the ITC limit set under Rule 36(4), ie, 20%, 10% and 5%.	The circular effectively extends Circular 183 to the periods upto December 2021.
6	192/04/2023-GST	<ul style="list-style-type: none"> Where wrong availed IGST credit is subsequently reversed, there will not be any interest liability, if the balance of ITC under the heads of IGST, CGST and SGST taken together has never fallen below the amount of wrongly availed IGST credit, during the time period starting from such availment and up to subsequent reversal. This will apply even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. Credit of compensation cess in electronic credit ledger cannot be considered for the balance to calculate interest under sub-rule (3) 	<p>This is a welcome clarification and will support reduced computation of interest liability for IGST credit reversals. This is aligned to the order of utilization of credit.</p> <p>It needs to be evaluated whether the principles drawn in the Circular can be relied upon for similar position in</p>

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		of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit	respect of CGST and/ or SGST reversals.
7	197/09/2023-GST	Clarifies on various refund related issues such as sanctioning of refund basis GSTR-2B, modification in requirement of undertaking in RFD-01, manner of calculation of adjusted total turnover for export of goods and other issues.	For service exporters, the clarification around export benefit even if realization is beyond the period of 1 year is welcome.
8	195/04/2023-GST	<ul style="list-style-type: none"> No GST is applicable in cases where manufacturer provides replacement of parts/ repair services to the customer during warranty period, unless additional consideration is charged No reversal of ITC is required in cases where manufacturer provides replacement of parts/ repair services to the customer during warranty period No GST is applicable in cases where distributor provides replacement of parts/ repair services to the customer during warranty period on behalf of manufacturer, unless additional consideration is paid by the customer 	This clarifies various issues in context of warranty arrangements; and are relevant for evaluating implications on inward and outward movement of various faulty parts/ replacement parts.

*****This update has been prepared with support from our Knowledge Partners, Deloitte India*****