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Compliances of GST in Banking Sector

Compliances of GST in Banking Sector (June, 2020)



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi



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Foreword

Banking industry provides wide range of services to its customers including traditional banking services, mutual fund agency services etc. Majority of services provided by the Banks come within the purview of Goods and Services Tax (GST), out of which few services like extending deposits, loans or advances, sale or purchase of foreign currency amongst banks etc. are given exemption by way of notification. Further, the banking sector is characterised by use of upsurge integrated technologies with variety of products and services apart from voluminous pervasive transactions, therefore, it is crucial to implement and ensure best GST compliance in this sector. For this purpose, it is necessary to have a comprehensive overview of the functioning of a bank and critical analysis of each and every aspect of transaction from the point of GST, i.e., an insight to GST applicability on banking sector.

With a view to provide guidance/ assistance to the members with updated knowledge to check the compliance of GST in banking sector specially while doing the Bank Branch/Central Statutory and Concurrent Audit, the GST & Indirect Taxes Committee of the Institute of Chartered Accountants of India (ICAI) has revised its publication titled “**Compliances of GST in Banking Sector**”. This publication contains an analysis of the provisions of the GST law in respect of Income earned and expenses incurred by banks, input tax credit under GST, routine procedural checks, questionnaire for GST Audit of banks etc.

I congratulate CA. Rajendra Kumar P, Chairman; CA. Sushil K. Goyal, Vice-Chairman and other members of GST & Indirect Taxes Committee for getting the material updated in a timely manner for the benefits of members and other stakeholders at large.

I am sure that the members would find this publication immensely useful while providing services to the Banking Sector as auditors or otherwise.

Date: 30-06-2020
Place: New Delhi

CA. Atul Kumar Gupta
President

Preface

Banks are a subset of the financial services industry. Trust and confidence of people in banking sector entail economic strength of the country. For safe and sound banking sector, one of the most crucial factors is reliable financial information supported by quality bank audits. By conducting audits of financial statements of banks, the auditors play a key role in building a resilient banking sector. Bank audit involves huge volumes and complexity of transactions, wide geographical spread of banks' network, enormous range of products and services offered by banks, extensive use of technology in banks etc. All these factors make the task of the bank auditors quite challenging in doing the audits. Therefore, to ensure the GST compliance, it is utmost important to have understanding and clarity of updated provisions of GST on levy, exemption, registration, place of supply, time of supply, valuation, restrictive credit of 50%, ISD Compliance, reverse charge transactions, etc.

Considering the above fact, the GST & Indirect Taxes Committee has revised its e-publication titled "*Compliances of GST in Banking Sector*". The revised publication has been updated with the GST provisions applicable to Banking Sector for the financial year 2019-20 apart from shading light on exigibility of GST, income earned/expenses incurred by banks, routine procedural checks etc.

We sincerely thank to CA. Atul Kumar Gupta, President and CA. Nihar Niranjan Jambusaria, Vice-President, ICAI for their encouragement to the initiatives of the GST & Indirect Taxes Committee. We express our gratitude for the untiring effort of CA. S Ramesh for revising this publication.

We trust this publication will be of practical use to members while conducting the bank audit assignments. We look forward to feedback from members for further improvement in this publication in subsequent years at gst@icai.in and request to visit our website <https://idtc.icai.org/> and provide valuable inputs in our journey to make GST truly a good and simple tax.

CA. Rajendra Kumar P.
Chairman
GST & Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice-Chairman
GST & Indirect Taxes Committee

Date: 30-06-2020
Place: New Delhi

Contents

<i>Foreword</i>	<i>iii</i>
<i>Preface</i>	<i>v</i>
1. Banking Sector – An Overview	1
2. Incomes Earned By Banks.....	19
3. Expenses Incurred By Banks	24
4. Input Tax Credit	41
5. Routine Procedural Checks under GST regime	55
6. Questionnaire for GST Audit of Banks.....	68
Annexure A: Reconciliation of Turnover	74
Annexure B: Details of Discharge of Liabilities	75
Annexure C: Details of ITC taken, Utilized and Reversed	77
Annexure D: Details of transactions, where incorrect tax paid (Section-77)-GST	82
Appendix: Clarification regarding Questionnaire for GST Audit of Banks	83

Chapter 1

Banking Sector – An Overview

SERVICE TAX APPLICABILITY ON BANKS

Service Tax was introduced in India on 01.07.1994. However, Banking and Other Financial Services had been brought within the ambit of Service Tax w.e.f. 16.07.2001.

Services mentioned in section 65(12)(a) of the Finance Act, 1994 were made taxable, if provided by:

- (a) Banking company and financial institution including NBFCs from July 16, 2001; or
- (b) Any other body corporate from August 16, 2002; or
- (c) Any other commercial concern from September 10, 2004.

Services mentioned in section 65(12)(b) of the Finance Act, 1994 are taxable, if provided by:

- (a) Banking companies, financial institutions including NBFCs and other body corporates from July 1, 2003; or
- (b) Commercial Concerns from September 10, 2004.

Further, with effect from May 16, 2008, section 65(12) has been amended to levy service tax on foreign exchange broking and purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer also.

Banking Services under Negative List of Services w.e.f. July 1, 2012

After the **introduction of Negative List i.e. with effect from July 1, 2012**, Service Tax was applicable on all services provided by banks except followings:

- Services by the Reserve Bank of India;
- Services by way of—

Compliances of GST in Banking Sector

- (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
- (ii) *inter se* sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

Rate of Service Tax

Period	Service Tax			EC	SHEC	SBC	KKC	Total Rate
16.07.2001 to 13.05.2003	5%	-	-	-	-	-	-	5%
14.05.2003 to 09.09.2004	8%	-	-	-	-	-	-	8%
10-09-2004 to 17-04-2006	10%	2%	-	-	-	-	-	10.20%
18-04-2006 to 10-05-2007	12%	2%	-	-	-	-	-	12.24%
11-05-2007 to 23-02-2009	12%	2%	1%	-	-	-	-	12.36%
24-02-2009 to 31-03-2012	10%	2%	1%	-	-	-	-	10.30%
01-04-2012 to 31-05-2015	12%	2%	1%	-	-	-	-	12.36%
01.06.2015 to 14-11-2015	14%	-	-	-	-	-	-	14%
15.11.2015 to 31.05.2016	14%	-	-	0.5%	-	-	-	14.5%
With effect from 01.06.2016 upto 30.6.2017	14%	-	-	0.5%	0.5%	-	-	15%

Banking Services under GST w.e.f. July 1, 2017

GST is applicable on Banking services as far as it qualifies the taxable event i.e Supply of Services. However, following Supplies made without

Banking Sector – An Overview

consideration as specified in Schedule I of the Central Goods and Services Act, 2017 (“**the CGST Act**”) are subject to tax, which is a paradigm shift from the earlier regime:

- Permanent transfer or disposal of business assets where input tax credit (“**ITC**”) has been availed on such assets.
- Inter Unit Supply: Supply of goods/ services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business.

Therefore, any supply of goods or services or both supplied or received by one branch bank to another or by Head office bank to branch bank or *vice versa* without consideration, shall be considered as supply under GST for payment of tax.

- Activity performed by employer to employee without consideration will be taxable under GST, except where the value such supply does not exceed ₹ 50,000 in a financial year.

Although no consideration is involved yet, payment of tax needs to be done on value determined in terms of section 15 of the CGST Act read with Rule 28 of the Central Goods and Services Rules, 2017 (“**the CGST Rules**”).

Since, such transactions are generally not captured in books of accounts therefore, auditor should apply substantial audit procedure to check compliances.

Tax Framework

Service Tax under earlier regime was levied and collected by the Central Government, however, with the implementation of GST, CGST/SGST is levied by Central / State Government respectively on all intra-State supply and IGST is levied by the Central Government on all inter-State supplies

Relevant Exemptions under GST

GST is applicable on all services provided by the banks except followings:

- Services by the Reserve Bank of India;
- Services by way of—
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);

Compliances of GST in Banking Sector

- (ii) *inter se* sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

Where-

(zk) **“interest”** means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but **does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;**

- Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY). [*inserted w.e.f. 01-01-2019 vide Notification No. 28/2018-Central Tax (Rate), dated 31-12-2018 in CGST and vide Notification No. 29/2018-Integrated Tax (Rate), dated 31-12-2018 in IGST.*]
- Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Explanation. — For the purposes of this entry, “*acquiring bank*” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

- Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions. [*Initially this exemption was inserted w.e.f. 27-07-2018 vide Notification No. 14/2018-Central Tax (Rate), dated 26-07-2018 in CGST and vide Notification No. 15/2018-Integrated Tax (Rate), dated 26-07-2018 in IGST. Latter, the words “banking companies and” were inserted w.e.f. 01-01-2019 vide Notification No. 28/2018-Central Tax (Rate), dated 31-12-2018 in CGST and vide Notification No. 29/2018-Integrated Tax (Rate), dt.31-12-2018.*]
- Services by way of collection of contribution under the Atal Pension Yojana
- Services by way of collection of contribution under any pension scheme of the State Governments

Banking Sector – An Overview

- Services by the following persons in respective capacities —
 - (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
 - (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
 - (c) business facilitator or a business correspondent to an insurance company in a rural area.
- Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).

Where-

The intermediary of financial services in IFSC is a person,-

- (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or
- (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or
- (iii) who is registered under the Insurance Regulatory and Development Authority of India (international Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or
- (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.

[inserted w.e.f. 25-01-2018 vide Notification No. 2/2018-Central Tax (Rate), dated 25-01-2018 in CGST and vide Notification No. 2/2018-Integrated Tax (Rate), dated 25-01-2018 in IGST]

- Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government and Union territory.

The above services has been exempted intra/ inter-State supply of services from the payment of GST *vide Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 [“NN 12/2017-CTR”] and Notification No. 09/2017-Integrated Tax (Rate) dated 28-6-2017 [“NN 9/2017-ITR”] as amended from time to time.*

Compliances of GST in Banking Sector

Further, relevant additional exemption under IGST are:

- services received by RBI from outside India in relation to management of foreign exchange reserves. [NN 9/2017-ITR]
- services imported by a unit or a developer in the Special Economic Zone for authorised operations [Notification No. 18/2017-Integrated Tax (Rate) dated 5-7-2017]

Furthermore, the CBIC *vide* Circular No. 83/02/2019-GST, dated 1-1-2019 and read with Circular No. 211/1/2019-S.T., dated 15-1-2019, *inter alia* clarified that Services provided by Asian Development Bank (ADB) and International Finance Corporation (IFC) are exempt from GST. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.

RATE OF GST ON BANKING & OTHER FINANCIAL SERVICES

There is an increase in the tax rate from 15% in service tax (erstwhile indirect tax) to 18% under GST on the transaction charges levied on the financial services provided by the banks in relation to credit card, fund transfer, ATM transactions, processing fees on loans etc.

Note- It is essential to note that Service Tax was applicable in India excluding the State of Jammu & Kashmir. While GST is applicable in India w.e.f. 01.07.2017 including sea water upto 12 nautical miles and in Jammu & Kashmir w.e.f. 08.07.2017.

With the advent of Jammu and Kashmir Reorganisation Act, 2019, from 31st October, 2019, State of Jammu and Kashmir has been re-constituted into two union territories, namely Jammu and Kashmir (Union territory of Jammu and Kashmir with Legislature) and Ladakh (Union territory of Ladakh without Legislature) to which the Jammu and Kashmir Goods and Services Tax Act, 2017 and the Union Territory Goods and Services Tax Act, 2017 respectively shall be applicable.

TIME OF SUPPLY UNDER GST

The time of supply of services provided by the banks shall be determined in reference to section 13 of the CGST Act shall be the earliest of the following dates, namely: —

- (a) the date of issue of invoice by the supplier, if the invoice is issued within

Banking Sector – An Overview

the period prescribed under ~~sub-section (2) of~~¹ section 31 or the date of receipt of payment, whichever is earlier; or

- (b) the date of provision of service, if the invoice is not issued within the period prescribed under ~~sub-section (2) of~~² section 31 or the date of receipt of payment, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply

Explanation: -

- The date of receipt of payment: The date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier
- Date of issue of invoice: If the supplier of services is an insurer or banking company or financial institution including NBFC, invoice is to be issued within 45 days from the date of supply of service.

It is pertinent to mention that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Time of supply in case of reverse charge

1. In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be, earlier of the following dates, namely: -
 - (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
 - (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier;

¹ Omitted vide *The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01-02-2019*

² Omitted vide *The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01-02-2019*

Compliances of GST in Banking Sector

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

VALUE OF TAXABLE SUPPLY UNDER GST

The value of a supply of goods or services or both shall be: Transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply

Where Explanation to Section 15 of the CGST Act deems the persons below to be “*related persons*”:

- Officers / Directors of one another’s business
- Partners in business
- Employer – employee
- A person directly / indirectly owns / controls / holds 25% of shares of both the persons
- One directly / indirectly controls the other
- Both are directly / indirectly controlled by a third person
- Together, they directly / indirectly control a third person
- Members of the same family
- Sole agent / distributor / concessionaire of the other

S-15(2) Transaction Value INCLUDES:	Transaction Value EXCLUDES:
(i) Amounts charged by supplier to recipient in respect of any taxes, duties, cesses, fees and charges levied under any statute, other than taxes paid under GST regime;	Discount:- (i) Before / at the time of supply Single condition: Such discount is duly recorded in the invoice (ii) After the supply: Cumulative conditions:

Banking Sector – An Overview

<p>(ii) Amount incurred by Recipient which is liable to be paid by the Supplier;</p> <p>(iii) Charges by Supplier to Recipient being:</p> <ul style="list-style-type: none"> – Incidental expenses (e.g.: packing, commission) – Charges for anything done by the Supplier at the time or before the supply, in respect thereof. – Interest/ late fee/ penalty for delayed payment of consideration. – Subsidies directly linked to price- for supplier receiving the subsidy (excluding Central and State Govt subsidies; i.e., Government subsidies will not be included in transaction value). 	<ul style="list-style-type: none"> – Agreement establishing discount entered into before / at the time of supply. – Discount specifically linked to relevant invoices. – ITC reversed by the recipient to the extent of tax on discount.
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To determine value of certain specific transactions, Determination of Value of Supply rules have been prescribed in the CGST Rules (Rule 27-35). The Rules pertaining to banking Sector are:

Banking sector provides services of purchase and sale of foreign currency to its customers, the value of which can be ascertained in terms of Rule 32(2) of the CGST Rules as:		
OPTION -I	OPTION -II	
<p>When exchanged from or/ to INR:</p> <p>(i) Difference of Buying rate / Selling rate and RBI reference rate X Total units of currency (If RBI reference rate is not available, value shall be 1% of gross amount of INR received or provided)</p> <p>(ii) If neither of two currencies</p>	<p>Where Amount of currency exchanged</p> <p>Upto ₹ 1 lakh</p>	<p>1% of the gross amount of currency exchanged or ₹ 250/-, whichever is higher</p>

Compliances of GST in Banking Sector

exchanged in INR, (iii) the value shall be equal to 1% of the lesser of the two amounts (iv) the person changing the money would have received by converting any of the two currencies into INR (v) on that day at the reference rate provided by RBI.	₹ 1 lakh and up to ₹ 10 lakhs	₹ 1,000/-plus 0.5% of the gross amount of currency exchanged above ₹ 100,000/-
	exceeding ₹ 10 lakhs	₹ 5,500/- plus 0.10% of the gross amount of currency exchanged above ₹ 10 lakhs or ₹ 60,000/-, <i>whichever is lower</i>

Further, it is pertinent to mention here Rule 34 of the CGST Rules which provides the Rate of exchange of currency, other than Indian rupees, for determination of Value as under:

Transactions undertaken in foreign currency must be translated into Indian Rupees. The rate of exchange for the determination of the value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 and for the determination of the value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act.

Valuation of services between the distinct and related persons (excluding agents)

Generally, banks would have lot of common/ shared services being supported from Head Office such as call centre, security software etc. Further, many times one branch would internally provide service to other branches for example: resolving issue of a customer having PAN India accounts, providing local information etc. to other branches etc.

The value will be determined in terms of Rule 28 of the CGST Rules.

(a) The open market value of such supply	
(b) If open market value is not available	Value of supply of goods or services of like kind and quality
(c) If value of supply is not determinable under clause (a) or (b)	Value as determined by application of Rule 30 or Rule 31, in that order
<i>Provided that where goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person</i>	
<i>Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services</i>	

Value of supply based on cost i.e. cost of supply plus 10% mark-up (Rule 30 of the CGST Rules).

Value of supply determined by using reasonable means should be consistent with principles and general provisions of GST law (Rule 31 of the CGST Rules).

PLACE OF SUPPLY

WHERE THE LOCATION OF SUPPLIER OF SERVICES AND THE LOCATION OF THE RECIPIENT OF SERVICES IS IN INDIA		
Default Rule for the services other than the 12 specified services		
S.No.	Description of Supply	Place of Supply
(1)	B2B	Location of such Registered Person
(2)	B2C	(i) Location of the recipient where the address on record exists, and (ii) Location of the supplier of services in other cases

Compliances of GST in Banking Sector

Rule for the 12 specified services		
1.	Services directly in relation to immovable property including hotel accommodation	Location at which the immovable property or boat or vessel is located or intended to be located If located outside India: Location of the recipient.
2.	Restaurant and catering services, personal grooming, fitness, beauty treatment and health service	Location where the services are actually performed.
3.	Training and performance appraisal	B2B: Location of such Registered Person B2C: Location where the services are actually performed
4.	Admission to an event or amusement park	Place where the event is actually held or where the park or the other place is located
5.	Organisation of an event	B2B: Location of such Registered person B2C: Location where the event is actually held If the event is held outside India: Location of the recipient
6.	Transportation of goods, including by mail or courier	B2B: Location of such Registered Person B2C: Location at which such goods are handed over for their transportation Further, [where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods] ³
7.	Passenger transportation service	B2B: Location of such Registered Person B2C: Place where the passenger embarks on the conveyance for a continuous journey

³ Inserted vide The Integrated Goods and Services Tax Amendment Act, 2018 w.e.f. 01-02-2019

Banking Sector – An Overview

8.	Services on board a conveyance	Location of the first scheduled point of departure of that conveyance for the journey
9.	Banking and other financial services including stock broking services	Location of the recipient of services on the records of the supplier Location of the supplier of services if the location of the recipient of services is not available on the records of the supplier
10.	Insurance services	B2B: Location of such Registered Person B2C: Location of the recipient of services on the records of the supplier
11.	Advertisement services to the Government	The place of supply shall be taken as located in each of such States Proportionate value in case of multiple States
12.	Telecommunication services	Services involving fixed line, circuits, dish etc., and place of supply is the location of such fixed equipment. In case of mobile/ Internet post-paid services, it is the location of billing address of the recipient. In case of mobile connection/ Internet services, DTH- prepaid through selling agent/re-seller/distributor, place of supply shall be address of the selling agent/re-seller/distributor as per the records of the supplier at the time of supply. In case of sale of pre-paid voucher, the place of supply is the place of sale of such vouchers. In other cases, it is the address of the recipient in records and where such address is not available on records of supplier, place of supply shall be location of supplier.

Compliances of GST in Banking Sector

WHERE THE LOCATION OF THE SUPPLIER OF SERVICES OR THE LOCATION OF THE RECIPIENT OF SERVICES IS OUTSIDE INDIA		
Default Rule for the cross-border supply of services other than nine specified services		
S. No.	Description of Supply	Place of Supply
(1)	Any	Location of the recipient of service; If not available in the ordinary course of business, the location of the supplier of service
Rule for the 9 specified services		
1.	Services supplied in respect of goods which are required to be made physically available by recipient to supplier / a person acting on behalf of supplier. When services provided from a remote location by way of electronic means [Not applicable in case of goods that are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.] ⁴	The location where the services are actually performed. The location where the goods are situated
2.	Services supplied to an individual and requiring the physical presence of the recipient or person acting on his behalf	The location where the services are actually performed.

⁴ Inserted vide *The Integrated Goods and Services Tax Amendment Act, 2018 w.e.f. 01-02-2019*

Banking Sector – An Overview

3.	Immovable property-related services, including hotel accommodation	Location at which the immovable property is located or intended to be located.
4.	Admission to or organisation of an event	The place where the event is actually held
5.	If the said three services are supplied at more than one location. i.e. (i) Goods & individual related (ii) Immovable property-related (iii) Event related	
5.1	At more than one location, including a location in the taxable territory	Its place of supply shall be the location in the taxable territory
5.2	In more than one State or Union territory	Its place of supply shall be each such State/Union territory in proportion to the value of services provided in each State
6.	Services of transportation of goods, other than by way of mail or courier	Its place of supply shall be place of destination of such goods
7.	Passenger transportation services	Its place of supply shall be where, the passenger embarks on the conveyance for a continuous journey
8.	Services on board a conveyance	Location of the first scheduled point of departure of that conveyance for the journey
9.	Online information and database access or retrieval services	Its place of supply is location of the recipient of services

Place of supply for banking sector

- In case, where the location of the banks or location of the recipient of service is in India, section 12(12) of the Integrated Goods and Services

Compliances of GST in Banking Sector

Act, 2017 (“the IGST Act”), provides for the place of supply of services as -

The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services. Provided that, if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services

- In case, where the location of the banks or location of the recipient of service is outside India, section 13(8) of the IGST Act provides that-

The place of supply of the following services shall be the location of the supplier of services, namely: —

- (a) *services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;*
- (b) *intermediary services;*
- (c) *services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.*

Explanation - For the purposes of this sub-section, the expression, –

- (a) *“account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;*
- (b) *“banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;*
- (c) *“financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934;*
- (d) *“non-banking financial company” means, —*
 - (i) *a financial institution which is a company;*
 - (ii) *a non-banking institution which is a company, and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or*

Banking Sector – An Overview

(iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

Therefore, service provided by the bank to its account holder shall be deemed to be provided at the place where such bank is located.

Further, in terms of section 13 of the IGST Act, 2017 where Location of Supplier or Location of Recipient is outside India, place of supply will be the location of the recipient of the services. But, where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services. Therefore, service provided by the bank to person other than account holder located outside India, is location of the supplier of services. Accordingly place of supply of service provided by the bank to its customer located outside India shall be location of bank and CGST and SGST or UTGST, as the case may be, will be payable.

Further Section 2(13) of IGST Act define intermediary

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

As inferred from section 13(8)(b) of IGST Act, place of supply in case intermediary services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders shall be the location of the supplier.

To bring more clarify, it is indispensable to understand the term “location of supplier of services’ as defined under Section 2(15) of IGST Act as-

Location of supplier of services means –

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the

Compliances of GST in Banking Sector

establishment most directly concerned with the provision of the supply; and in the absence of such places, the location of the usual place of residence of the supplier.

Where, Section 2(85) of the CGST Act, defines the term place of business as:

place of business includes:

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called

And Section 2(50) of the CGST Act definition of fixed establishment, as:

fixed establishment means:

- a place (other than the registered place of business)
- which is characterised by –
 - a sufficient degree of permanence and
 - suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.

Chapter 2

Incomes Earned By Banks

Incomes are earned by banks from various sources other than interest. The interest income forms the major part of the incomes but in recent years due to globalisation such a scenario has been changed and accordingly the banking sector has involved themselves into numerous activities resulting into variety of incomes. All such incomes are recorded in the books of accounts under various heads which we have to analyse and decide taxability on the same. The income so earned, and their taxability are as under:

1. Interest income

The income earned by way of grant of loans, deposits etc. is a taxable supply. However, by virtue of entry 27(a) of NN 12/2017-CTR and entry 28(a) of NN 9/2017-ITR, no GST is payable on income earned by way of interest **except interest income earned through credit card**. The relevant extract of the said entry is as under:

Sl No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of services	Rate (%)	Condition
27	Heading 9971	(a) Services by way of—(a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount <u>(other than interest involved in credit card services)</u> ;	NIL	NIL

Therefore, audit from the perspective of GST into the same may be restricted to the fundamental question as to whether the income is rightly characterized as 'interest' to enjoy the exemption under GST, or taxable like the income earned from credit card services.

Compliances of GST in Banking Sector

2. Commission income

The instant income is classified as a supply of service transaction and accordingly would be classified in terms of chapter heading as specified in the relevant notifications issued under GST.

Commission earned (on accrual) is liable to GST. For e.g.:

- (a) M/s. A Ltd. wants to invest in fixed securities / bonds which can be only routed through ICICI bank as they have exclusive rights for subscribing the same. ICICI bank gets 2% commission on the amounts so subscribed. For the period 2018-19, the bank earns ₹ 250 crores of commission from such subscription which is recorded as 'Other Income'. The auditor has to check whether GST is appropriately disbursed on the said amount. Whether payments are made by complying with the due date for payment of GST. Also, verify returns filed reveals the correct amount of liability. If the tax is not discharged, then appropriate disclosure with regard to tax and interest would be required. Suitable disclosure as to whether any contingency exists in respect of applicable penalty may also be provided.

Further, review of agreements where commission is earned must be carried out thoroughly and if any milestone incentives, performance bonus, time bonus etc., is provided then appropriate tax treatment should be suggested.

- (b) ICICI bank gets 1% commission from private companies for providing them investment exposure in foreign markets. The same is liable for payment of GST and appropriate tax treatment should be followed and suggested. Disclosures as discussed above may be considered, if any tax liability is found to be unpaid

Note - Where the investment activity is undertaken in another group company, but the banking entity provides leads to such investment activity for which it receives some (smaller) percent as commission, such transactions should be thoroughly analysed, and proper movement of funds be tracked.

3. Brokerage income

The instant income is classified as a supply of service transaction and accordingly would be classified in terms of chapter heading as specified in the relevant notifications issued under GST.

4. Agency charges

Generally, such income is earned by way of being appointed as an agent either by RBI, State Governments, Central Governments or by some corporates. Under such arrangements, banks act as a facilitator/collection centre and in lieu of provision of such services, banks collect certain fees as "Agency charges". Such charges are liable for payment of GST. Very often, the underlying arrangement will be of agency, but it may be described in a contemporary terminology like 'enablement charge' or 'facilitation fee' or simple 'management fee' which may appear misleading.

The auditor needs to analyse the relevant agreements entered and has to study the flow of consideration and thereafter decide taxability and the amount on which GST is applicable. The same has to be communicated to the management, if no GST has been paid till date.

5. Portfolio management service:

Generally, the said services are being provided by different entities within the banking sector. Due to stiff competition and one-stop window for priority customer's (i.e. customers who are depositing amount beyond a certain limits) only one person provides all such services and thereafter relevant commissions are split between entities or costs are shared. In fact, inter-branch sharing of portfolio management services in lieu of the skill set available in selected branches between different States is taxable and a fair value has to be assigned to such transaction and applicable GST is payable on such transaction. Further, appropriate classification must be made for such supply of services under relevant chapter heading as per the notifications issued under GST.

6. Account maintenance charges:

It is a common practice that in most of the banks certain charges are recovered towards maintenance. The said charges are nominal but the same is liable for payment of GST. Accordingly, the concerned concurrent /internal /statutory auditor would do well to check on this aspect of taxability and ensure compliance.

Further, even locker charges are being recovered from the customers on an annual basis which is liable for payment of GST. There can be different modes of arrangement for availing such income, but such income is taxable under GST.

Compliances of GST in Banking Sector

The provisions relating to place of supply will become imperative while determining the correct nature of the transaction and thereafter taxability has to be decided. Further, appropriate classification must be made for such supply of services under relevant chapter heading as per the notifications issued under GST.

7. Credit/Debit card charges

Income earned by way of issuing and maintaining such transactions are liable for payment of GST. Therefore, auditor should carefully examine such transactions and appropriate disclosures be made in case of non-compliance with relevant tax provisions.

Note- Fees charged for card settlement is a consideration which is part of a separate transaction between the banks which are parties to this transaction and shall be liable to GST. This is a B2B supply and credit of this transaction is available. In short, GST will be levied on interchange fees on card settlement fees paid/shared by banks.

8. Digital payment facilities

Banks charges some convenience fees from the person who accepts payment through debit card, credit card or through other some other card service. The charges earned by the bank are liable to GST. However, no GST will be payable in respect to services provided by bank, to any person in relation to settlement of an amount up to ₹ 2000 in a single transaction transacted through credit card, debit card or charge card or other payment card service.

9. Sale and purchase of foreign currency:

Banking companies receiving consideration for providing services by way of securities; foreign exchange broking and purchase or sale of foreign currency, including money changing is chargeable to GST on special value calculated as per option availed in terms of Rule 32 of CGST Rules.

However, pursuant to entry no. 27(b) of NN 12/2017-CTR and entry no.28(b) of NN 9/2017-ITR, inter-bank transactions of sale or purchase of foreign currency or transactions with authorized dealers of money changing are exemption under GST regime.

10. Other income

- Income earned by banks by way of penalties, retention charges etc. are liable for payment of GST.

Incomes Earned By Banks

For e.g.:

- (a) IVY Bank charges ₹ 2500/- to all those customers who maintains an average quarterly balance below ₹ 25000/-. Accordingly, the total collection of income from such source is ₹ 5,00,00,000/-, therefore IVY bank has to discharge GST on the same at appropriate rate.
 - (b) IVY Bank penalises ₹ 500/- to all such customers whose cheques are bounced and the income collection for the period 2019-2020 is ₹ 50,00,000/-. IVY bank has to discharge GST on the same at appropriate rate.
 - (c) IVY Bank charges ₹ 50/- for issuing DD. Such income is liable for payment of GST and the auditor must carefully scrutinise whether appropriate tax rate has been disbursed.
- Realisation of payment from Non-Performing Assets (NPA) by way of disposal of NPA to an asset reconstruction company [ARC] or to any other buyer is a debatable issue. However, as per the author's opinion the taxability depends upon the structuring of the transaction. As per authors view this transaction may be considered as actionable claim on which both service tax / VAT were not applicable. Keeping that ideology of actionable claim under consideration, GST will also not apply as definition of supply [Clause 6 Schedule III read with Section 7] under the CGST Act exclude actionable claim. Another view is that; this transaction may be an outright sale. When there is outright sale the service tax/ GST applicability will depend on the nature of underlying asset sold and is to be paid by borrower. e.g. IVY Bank sells one of its NPA as a going concern to Company ABC then the instant transaction is taxable under GST and the same is classified as a supply of service, accordingly the rate of tax payable is NIL in terms of Entry 2 classified under Chapter 99 as specified under Exemption NN 12/2017-CTR.

To summarise all the income sources of the banks, have to be thoroughly scrutinised specifically interest income from credit cards and thereafter the auditor has to comment on its taxability, compliance with tax payment along with interest, applicable penalty and transparency in disclosure in the returns filed.

Chapter 3

Expenses Incurred By Banks

Generally, obligation to discharge GST lies on the supplier of supply. But there exist certain cases on which Reverse charge is applicable. Various expenses incurred by the banks are exigible to tax under on Reverse Charge Mechanism (“RCM”).

Under RCM, the duty to discharge tax is cast on recipient of supply. RCM under GST depends on the nature of supply and/or nature of supplier. All taxpayers required to pay tax under reverse charge must mandatorily obtain registration and the threshold exemption is not applicable to them. Payment of taxes under Reverse Charge cannot be made with utilisation of ITC and must be made in Cash. Unlike, service tax where both full and partial reverse charge exists, in GST only full charge subsists.

Section 9(3) of the CGST Act/ Section 5(3) of the IGST Act specify categories of supply of goods or services or both as notified by Government on recommendations of the Council on which RCM is applicable. In this regard, Government *vide Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017 (“NN 13/2017-CTR”) / Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 (“NN 10/2017-ITR”)* as amended from time to time specify the category of services on which RCM is applicable.

[Till 30.05.2020, NN 13/2017-CTR has been amended vide

- *Corrigendum dated 25-09-2017 issued in F. No. 336/20/2017-TRU*
- *Notification No. 22/2017-Central Tax (Rate), dated 22-08-2017*
- *Notification No. 33/2017-Central Tax (Rate), dated 13-10-2017*
- *Notification No. 3/2018-Central Tax (Rate), dated 25-01-2018*
- *Notification No. 15/2018-Central Tax (Rate), dated 26-07-2018*
- *Notification No. 29/2018-Central Tax (Rate), dated 31-12-2018*
- *Notification No. 05/2019-Central Tax (Rate), dated 29-03-2019*
- *Notification No. 22/2019-Central Tax (Rate), dated 30-09-2019*
- *Notification No. 29/2019-Central Tax (Rate), dated 31-12-2019]*

Expenses Incurred By Banks

[Till 30.05.2020, NN 10/2017-ITR has been amended vide

- *Notification No. 22/2017-Integrated Tax (Rate), dated 22-08-2017*
- *Corrigendum dated 25-09-2017 issued in F. No. 336/20/2017-TRU*
- *Notification No. 34/2017-Integrated Tax (Rate), dated 13-10-2017*
- *Notification No. 03/2018-Integrated Tax (Rate), dated 25-01-2018*
- *Notification No. 16/2018-Integrated Tax (Rate), dated 26-07-2018*
- *Notification No. 30/2018-Integrated Tax (Rate), dated 31-12-2018*
- *Notification No. 31/2018-Integrated Tax (Rate), dated 31-12-2018*
- *Notification No. 05/2019-Integrated Tax (Rate), dated 29-03-2019*
- *Notification No. 21/2019-Integrated Tax (Rate), dated 30-09-2019*
- *Notification No. 28/2019-Integrated Tax (Rate), dated 31-12-2019*

The list of such services where reverse charge mechanism under NN 13/2017-CTR is applicable is as under:

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1.	Supply of Services by a goods transport agency (GTA) [who has not paid central tax at the rate of 6%,] ⁵ in respect of transportation of goods by road to- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any co-operative society	Goods Transport Agency (GTA)	(a) Any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of

⁵ The words and figure ", who has not paid central tax at the rate of 6%," were inserted w.e.f. 22-08-2017 vide Notification No. 22/2017-Central Tax (Rate), dated 22-08-2017.

Compliances of GST in Banking Sector

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
	<p>established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person.</p> <p>[Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, -</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51</p>		<p>India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person;</p>

Expenses Incurred By Banks

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
	and not for making a taxable supply of goods or services.] ⁶		located in the taxable territory.
2.	⁷ [Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly. Explanation. - "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.]	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.
3.	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.
4.	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5.	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below-	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

⁶ Proviso was inserted w.e.f. 01-01-2019 vide Notification No. 29/2018-Central Tax (Rate), dated 31-12-2018.

⁷ Column (2) against Sl.No. 2 was corrected vide Corrigendum dated 25-09-2017 issued in F.No. 336/20/2017-TRU. Before correction, it read as -

"Services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity."

Compliances of GST in Banking Sector

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
	(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.		
[5A]	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017.] ⁸
[5B]	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter.
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price,	Any person	Promoter.] ⁹

⁸ Sl.No. 5A was inserted w.e.f. 25-01-2018 vide Notification No. 3/2018-Central Tax (Rate), dated 25-01-2018.

⁹ Sl.No. 5B and C was inserted vide Notification No. 05/2019- Central Tax (Rate), dated 29-03-2019.

Expenses Incurred By Banks

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
	development charges or by any other name) and/or periodic rent for construction of a project by a promoter.		
6.	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.
7.	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
8.	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.
9.	[Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.] ¹⁰

¹⁰ Sl.No. 9 Substituted vide Notification No. 22/2019 – Central Tax (Rate) dated 30-09-2019 w.e.f. 1-10-2019. Prior to substitution it read:

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like.	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory.

Compliances of GST in Banking Sector

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
	of a copyright covered under clause (a) of sub- section (1) of section 13 of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.		
[9A]	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub -section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory: Provided that nothing contained in this entry shall apply where, - (i) the author has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017), and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST or SGST commissioner, as the case may be, that he exercises the option to pay central tax on the service specified in column (2),

Expenses Incurred By Banks

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
			<p>under forward charge in accordance with Section 9 (1) of the Central Goods and Service Tax Act, 2017 under forward charge, and to comply with all the provisions of Central Goods and Service Tax Act, 2017 (12 of 2017) as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;</p> <p>(ii)the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST Inv-I to the</p>

Compliances of GST in Banking Sector

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
			publisher.] ¹¹
10.	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.] ¹²
[11.	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs).	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.	A banking company or a non-banking financial company, located in the taxable territory.] ¹³
12.	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory
13.	Services provided by an agent of business correspondent (BC) to business correspondent (BC).	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.
14.	Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to, - (i)	Any person other than a body corporate	A registered person, located in the taxable territory.] ¹⁴

¹¹ Sl.No. 9A was inserted w.e.f. 1-10-2019 vide Notification No. 22/2019-Central Tax (Rate), dated 30-09-2019.

¹² Sl.No. 10 was inserted w.e.f. 13-10-2017 vide Notification No. 33/2017-Central Tax (Rate), dated 13-10-2017.

¹³ Sl.No. 11 was inserted w.e.f. 27-07-2018 vide Notification No. 15/2018-Central Tax (Rate), dated 26-07-2018.

¹⁴ Sl.Nos. 12, 13 and 14 the entries relating thereto were inserted w.e.f. 01-01-2019 vide Notification No. 29/2018-Central Tax (Rate), dt. 31-12-2018.

Expenses Incurred By Banks

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
	(a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act.		
[15.	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice	Any body corporate located in the taxable territory.] ¹⁵

¹⁵ Sl.No. 15 was inserted w.e.f. 1-10-2019 vide Notification No 22/2019-Central Tax (Rate) dated 30-09-2019, then amended w.e.f. 31-12-2019 vide Notification No - 29/2019-Central Tax (Rate) dated 31-12-2019. Prior to this substitution it read as under:

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
15	Services provided by way of renting of a motor vehicle provided to a body corporate.	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory.

Compliances of GST in Banking Sector

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
		charging central tax at the rate of 6% to the service recipient.	
16.	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended.	Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI.] ¹⁶

In addition to the above list given under Central Tax- Rate, following additional category of supply of services is listed under **NN 10/2017-ITR** on which GST shall be paid by the recipient on reverse charge basis: -

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.
2	Services supplied by a person located in non- taxable	A person located in	Importer, as defined in clause (26) of section 2 of the

¹⁶ Sl.No. 15 and 16 was inserted w.e.f. 01-10-2019 vide Notification No. 22/2019-Central Tax (Rate), dated 30-09-2019.

Expenses Incurred By Banks

territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	non-taxable territory	Customs Act, 1962(52 of 1962), located in the taxable territory.
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RCM as per section 9(4) of the CGST Act or section 5(4) of the IGST Act

Prior to 1.02.2019, RCM as per section 9(4) of the CGST Act or section 5(4) of the IGST Act would include supply of taxable goods or services or both by an unregistered supplier to a registered person.

To avoid leakage of tax and to encourage the business community to pay GST, RCM under section 9(4) was been introduced on any expenditure incurred by the registered person over ₹ 5000/- per day [vide Notification No.8/2017-Central Tax (Rate) dated 28.06.2017], under the situation where the supplier does not pay tax. However, this limit of ₹ 5,000/- vide Notification no. 38/2017- Central Tax (Rate)dated 13.10.2017 has been withdrawn and hence, payment of tax under section 9(4) of the CGST Act was exempted till 31.03.2018. Moreover, payment of tax under section 5(4) of the CGST Act was exempted till 31.03.2018 vide Notification No. 32/2017 – Integrated Tax (Rate) dated 13.10.2017. Thereafter, this provision of reverse charge was deferred till 30.09.2019, the relevant notifications numbers are:

Exempted From	Notification under CGST	Notification under IGST
From 1.04.2018 to 30.06.2018	Notification No. 10/2018 – Central Tax (Rate) dated 23.03.2018	Notification No. 11/2018 – Integrated Tax (Rate) dated 23.03.2018
From 1.07.2018 to 30.09.2018	Notification No. 12/2018 – Central Tax (Rate) dated 29.06.2018	Notification No. 13/2018 – Integrated Tax (Rate) dated 29.06.2018
From 01.10.2018 to 30.09.2019	Notification No. 22/2018 – Central Tax (Rate) dated 06.08.2018	Notification No. 23/2018 – Integrated Tax (Rate) dated 06.08.2018

Subsequently, in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts, reverse charge exemption Notification No.8/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 32/2017 – Integrated Tax (Rate) dated 13.10.2017 has been rescinded with effect from 1.02.2019 vide Notification No 01/2019-Central/ Integrated Tax (Rate), both dated 29-01-2019.

Compliances of GST in Banking Sector

Further, with effect from 1st February 2019, The Central Goods and Services Tax (Amendment) Act, 2018 has substituted section 9(4) of the CGST Act, as:

“(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.”

Hence, reverse charge on inward supplies from unregistered persons to be applicable, ‘categories of registered persons’ and ‘categories of goods or services’ are required to be notified. However, no such notification has been issued (yet) making banking companies liable to reverse charge.

Some of the services which are relevant with respect to the Banking sector are explained in detail below:

Services provided by recovery agent

Generally, loans are the areas wherein the banks earn major portion of their income. It is the most organized form of extending credit to customers and interest income is earned in respect of such credits extended. Majority of banks spend great time and effort in recovering credits so granted.

Further, many banks sell their loans to third parties or hire third party agents to initiate recovery on their behalf.

Loans sold to factoring agents are not liable for payment of GST. Please examine that these transactions would be ‘exempt supply’ depending on whether these are with or without recourse.

Third parties are hired to initiate recovery on behalf of the banks which is purely a service transaction and liable to payment of GST. RCM is applicable on such transactions and therefore the banks who hire such third-party agents are liable for payment of GST on the fees so paid to these recovery agents/third party agents. Banks also provide infrastructure, phone facilities and such other benefits to these third-party agents in order to perform their services. Even such value is required to be taken into consideration while determining the value of supply for the purpose of payment of GST.

As an auditor, one should check the agreements between the bank and the recovery agent. Under GST regime, the bank should raise a self-invoice and

Expenses Incurred By Banks

thereafter appropriate GST @ 18% should be paid on the same. The income so earned should be disclosed in the relevant chapter heading as classified under the GST regime.

Services provided by insurance agent

If the banks are also engaged in business of insurance, then the services provided by such insurance agent who sell insurance products of the banks is liable for payment of GST. Further, the amount on which tax is payable is the commission paid to the insurance agent. Such commission also includes reimbursement by any mode.

The insurance division of the banks receiving the services from those insurance agents are liable for payment of GST under RCM.

As an auditor, one should check the agreements between the bank and the insurance agent. Under GST regime, the bank should raise a self-invoice and thereafter appropriate GST @ 18% should be paid on the same. The income so earned should be disclosed in the relevant chapter heading as classified under the GST regime.

Services provided by Goods Transport Agency (GTA):

W.e.f. July 1,2017 *vide Entry No.1 of NN 13/2017-CTR*, if any services in respect of transportation of goods by road are provided by GTA to the following recipient located in the taxable territory, then recipient of service is liable to pay tax under reverse charge:

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or
- (c) any co-operative society established by or under any law; or
- (d) any person registered under the CGST Act or the IGST Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons; or

Compliances of GST in Banking Sector

(g) any casual taxable person.

However, w.e.f 22-08-2017 vide Notification No. 22/2017 dated 22-08-2017 which amended NN 13/2017-CTR, the GTA was given an option to pay to GST @ 5% (2.5 CGST+2.5 SGST/ 5% IGST), if no ITC is availed subject to RCM. Further, if GTA has availed ITC, GST is to be paid by GTA @12%.

Further, w.e.f. 01-01-2019 vide Notification No. 29/2018-Central Tax (Rate), dated 31-12-2018, nothing contained in this entry shall apply to services provided by a GTA, by way of transport of goods in a goods carriage by road, to -

- (a) a Department or Establishment of the Central Government or State Government or Union territory; or
- (b) local authority; or
- (c) Governmental agencies,

which has taken registration under the CGST Act (only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

Therefore, auditor has to check that correct ITC is taken, and appropriate person has discharged the tax. Carriage of Goods by Road Act, 2007 requires that no motor vehicle undertake transport of goods by road except with a proper registration of such motor vehicle. And every consignment be accompanied by a forward note or receiving note. Merely because goods are not of substantial value or not involving supply or involving inter-branch movement, it is not appropriate to avoid issuing such a 'note'. When such 'note' is issued, the transporter will be a GTA. Under GST, GTA is one who issues a consignment note 'by whatever name called'.

Services provided by Advocates

W.e.f July 1, 2017 In terms of entry no. 2 of vide NN 13/2017-CTR, RCM was applicable on Services supplied by an individual advocate including a senior advocate by way of representational services before any Court, Tribunal or Authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity

Thereafter a Corrigendum to Notification No. 13/2017 was issued [M.F. (D.R.) Corrigendum F. No. 336/20/2017-TRU, dated 25-9-2017], thereby

Expenses Incurred By Banks

RCM is applicable on Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.

Where - "*legal service*" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

Usually, legal services are availed by banks 'on account of' their customers. Here, auditors ensure that banks do not withhold themselves from payment of RCM on legal fee paid on the premise that these services are availed 'on account of' their customers, especially when the legal fee is debited to customer's account. It is more appropriate that banks discharge RCM as fee from advocate will be issued to bank. Very often, it is observed that where expenses are incurred but debited to customer's account, RCM liability thereon, is somehow omitted. Customer's being unaware of the various components of costs that are embedded in the amounts debited to the account, RCM liability cannot possibly be discharged by them. Hence, banks may be advised to suitably ensure RCM is complied with.

Service provided by way of import of services

Many banks do spend a lot of funds on procuring services from abroad. Where the supply of goods or services or both are taxable in nature, GST is payable by the recipient bank. Some important areas are summarised as under:

1. Bond floating expenditure:

Generally, bond floating expenditure is an expenditure which though appropriately recorded in the books of accounts, skips the attention and the applicable taxes are not discharged often in respect of the same. Therefore, the concerned auditor should thoroughly inspect the books of accounts and identify all payments in foreign currency for compliance with these provisions.

For e.g.: IVY Bank wants to issue bonds in NYSE and for the said purpose has appointed WYE bank a leading bank in America for floating the said bonds and acting as a lead merchant banker. The fee for the same is generally some fixed percentage of the ticket size which is recorded appropriately in the books of accounts. The instant transaction is taxable in terms of Section 13 (2) of the IGST Act.

Compliances of GST in Banking Sector

Under the GST regime, the same requires thorough analysis of the transaction, as these are generally taxable as per Section 13 of the IGST Act. However, the actual answer may vary depending upon the structuring of the transaction.

2. Underwriting charges:

If underwriting charges are paid in foreign currency to an underwriter who is located outside India, then GST is payable on such transactions. Appropriate ledgers, contracts etc. should be scrutinised in detail and thereafter relevant disclosures should be made regarding taxability of the same.

3. I.T infrastructure cost:

Generally, I.T infrastructure is a common cost which the banks bears on all-India basis and executes one common contract for the same. If the vendor is based outside India or the technicians are outside India and payment is being disbursed in foreign currency. Though, such cost requires careful apportionment in terms of appropriate provisions including rules and depending upon the nature of the transaction appropriate GST (generally @ 18%) is payable on such transaction. Further, credit for the GST so paid is available.

In RCM the auditor must check the nature and description of supplies received by the concerned branch/head office.

Chapter 4

Input Tax Credit

Under the GST regime, a banking company or a financial institution including a non-banking financial company engaged in supplying services by way of accepting deposits, extending loans or advances shall have following two options to avail ITC in terms of Section 17(4) of the CGST Act. And the option once exercised shall not be withdrawn during the remaining part of the financial year.

OPTION I

Reverse the credit pertaining to exempted services as per the method stated in Section 17(2) of the CGST Act read with the relevant State Act and Rules thereof.

OR

OPTION II

Avail 50% of the eligible ITC on inputs, capital goods and input services in that month and the rest shall lapse. And accordingly follow the following procedure in accordance with Rule 38 of the CGST Rules:

1. Such banking company or financial institution shall not avail credit of:
 - the tax paid on inputs and input services that are used for non-business purposes and
 - the credit attributable to the supplies specified in Section 17(5), in **FORM GSTR-2**
2. Further, the condition of 50% restriction would not be applicable in case of the tax paid on supplies made by one registered person to another registered person having the same PAN. Hence, banking company or financial institution shall avail the credit of tax paid on inputs and input services in case of supplies made to its own branches i.e. inter branch i.e., by one registered person to another registered person having different GSTIN.
3. 50% of the remaining amount of input tax shall be admissible and shall be furnished in **FORM GSTR-2**.

Compliances of GST in Banking Sector

4. The amount referred in point 2. and 3 above shall subject to the provisions of Section 41, 42 and 43, be credited to the electronic credit ledger of the said banking company or financial institution.

Clarification on reversal of credits for banks and financial institutions including NBFCs

Relevant provisions have been amended to exclude banks and financial institutions including NBFCs engaged in providing services by way of extending deposits, loans or advances from its ambit. It has been provided in the said explanation that value for reversal of common ITC taken on inputs and input services used in providing taxable and exempted services, shall not include the value of services by way of extending deposits, loans or advances against consideration in the form of interest or discount.

Apportionment of credit

Section 17(2) of the CGST Act stipulates that, where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Credit attributable to exempt supplies is not available to a registered person. Exempt Supplies' for this purpose mean all supplies other than taxable and zero-rated supplies and specifically include the following:

- Supplies liable to tax under RCM;
- Transactions in securities;
- Sale of land; and
- Subject to Para 5(b) of Schedule II, sale of building.

Moreover, *vide the CGST Amendment Act, 2018 w.e.f. 1-02-2019*, the "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule i.e. Sale of Land (S-III) / building (S-II).

Hence, they will not entail any reversal of credit. Further, *vide the CGST Amendment Act, 2018 w.e.f. 1-02-2019*, a couple of clauses has been inserted within Schedule III of the CGST Act:

Input Tax Credit

“7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8.(a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption”

From the above, it can be gathered that excluding of supplies covered under Schedule III has resulted in lower reversal of credit particularly in case of high sea sales and merchant trade transactions.

Rule 42 of the CGST Rules: Manner of determination of ITC in respect of inputs or input services and reversal thereof via illustration:

Sl. No	Particulars	Reference	CGST	SGST/UTGST	IGST
1	Total input tax on inputs and input services for the tax period May 2018	T	1,00,000	1,00,000	50,000
	Out of the total input tax (T):				
2	Input tax used exclusively for non-business purposes (Note 1)	T ₁	10,000	10,000	5,000
3	Input tax used exclusively for effecting exempt supplies (Note 1)	T ₂	10,000	10,000	5,000
4	Input tax ineligible under Section 17(5) (Note 1)	T ₃	5,000	5,000	2,500
	Total		25,000	25,000	12,500
	ITC credited to Electronic Credit Ledger (Note 1)	$C_1 = T - (T_1 + T_2 + T_3)$	75,000	75,000	37,500

Compliances of GST in Banking Sector

Sl. No	Particulars	Reference	CGST	SGST/UTGST	IGST
	Input tax credit used exclusively for taxable supplies (including zero-rated supplies)	T ₄	50,000	50,000	25,000
	Common credit	C₂ = C₁ - T₄	25,000	25,000	12,500
	Aggregate value of exempt supplies for the tax period May 2018 (Note 2 & 3)	E	25,00,000	25,00,000	25,00,000
	Total Turnover of the registered person for the tax period May 2018 (Note 2)	F	1,00,00,000	1,00,00,000	1,00,00,000
	Credit attributable to exempt supplies	D ₁ = (E/F) * C ₂	6,250	6,250	3,125
	Credit attributable to non-business purposes	D ₂ = C ₂ * 5%	1,250	1,250	625
	Net eligible common credit	C ₃ = C ₂ - (D ₁ + D ₂)	17,500	17,500	8,750
	Total credit eligible (Exclusive + Common)	G = T₄ + C₃	67,500	67,500	33,750

Note 1: T₁, T₂, T₃ and T₄ shall be DETERMINED AS ABOVE and declared in **Form GSTR-2** and at summary level in **FORM GSTR-3B**.

Note 2: If the registered person does not have any turnover for May 2018, then the value of Exempt Supplies (E) and Total Turnover (F) shall be considered for the last tax period for which such details are available

Input Tax Credit

Note 3: Aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

Note 4: In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T_4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.

Note 5: In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under: -

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.

Remarks: Note 4 and 5 may only be applicable in case of apartment construction project-promoter and not a banking company.

Compliances of GST in Banking Sector

Note 6: Amount of 'C₃', 'D₁' and 'D₂' shall be computed separately for ITC of CGST, SGST, UTGST and IGST declared in **FORM GSTR-3B** or through **FORM GST DRC-03**.

And the amount equal to aggregate of 'D₁' and 'D₂' shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03**.

Note 7: The registered person is expected to make such computation for each tax period and reverse the same in the periodic returns being filed by such registered person. However, on completion of the financial year, ITC shall be determined accurately based on actuals, in the same manner as provided in Rule 42. A reconciliation is required to be done on an annual basis (between the amounts reversed for each tax period during the year and the amount determined at the end of the financial year) and any excess credit availed needs to be reversed with interest while short credit, if any, needs to be re-availed within 6 months from end of the financial year.

It is to be noted that the registered person would be required to remit excess ITC claimed (as determined in Note 7 above) with interest calculated for the period starting from the first day of April of the succeeding financial year till the date of payment. However, no interest can be claimed if, at the end of the financial year, it is found that short credit was availed.

Therefore, an auditor can check whether, Designated/ Nodal branch is reversing the ITC in compliance to the above Rule. If ITC is not reversed in compliance to the above Rules, it shall be treated as ITC wrongly taken and the same will be recovered along with the interest under Section 50 of the CGST Act.

Please note that, ITC by a Registered Taxable Person can only be availed subject to the fulfilment of following conditions:

Input Tax Credit

Basis - **tax invoice / debit note issued by a registered supplier**, or other prescribed taxpaying document

Goods and/or services have been received*

Tax actually paid by the supplier to the credit of the appropriate Government, either in cash or by utilization of ITC

Monthly return in Form GSTR-3 u/s 39 is furnished

Credit only upon receipt of the last lot/ instalment in case of goods received in lots / instalments.

Goods deemed to be received by a taxable person when the supplier delivers the goods to the recipient/ any other person, on the direction provided by the taxable person to the supplier.

Exception in case of goods being directly sent to job worker

If the recipient of services fails to pay (value + tax) within 180 days from date of invoice, (ITC availed + interest @ 18%) shall be added to his output tax liability. ITC available when amount discharged later

Documents required for availing credit are:

Invoice issued by a supplier of goods or services or both as per S-31	Invoice issued as per S-31(2)(f) by recipient along with proof of payment of tax	A debit note issued by supplier u/s 34
Bill of entry or similar document prescribed under the Customs Act, 1962	Revised invoice	Document issued by Input Service Distributor ("ISD").

No ITC allowed to be availed

- Beyond September of the following FY to which invoice pertains or date of filing of annual return, whichever is earlier.

Compliances of GST in Banking Sector

- In terms of Section 36(4), ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under section 37(1), shall not exceed 10%¹⁷ of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under section 37(1) of the CGST Act.

No ITC can be availed in terms of S- 17(5) of CGST Act – No ITC shall be available in respect of the following namely:

- (a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely: —
 - (A) further supply of such motor vehicles; or
 - (B) transportation of passengers; or
 - (C) imparting training on driving such motor vehicles;
- (aa) vessels and aircraft except when they are used—
 - (i) for making the following taxable supplies, namely: —
 - (A) further supply of such vessels or aircraft; or
 - (B) transportation of passengers; or
 - (C) imparting training on navigating such vessels; or
 - (D) imparting training on flying such aircraft;
 - (ii) for transportation of goods;
- (ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the ITC in respect of such services shall be available—

 - (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

¹⁷ Substituted vide Notification No. 75/2019 - Central Tax dated 26.12.2019 w.e.f. 01-01-2020. Prior to such substitution it was 20 % vide Notification No. 49/2019 - Central Tax dated dated 09-10-2019 via which Section 36(4) was inserted

Input Tax Credit

- (ii) where received by a taxable person engaged—
 - (I) in the manufacture of such motor vehicles, vessels or aircraft; or
 - (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;
- (b) the following supply of goods or services or both—
 - (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the ITC in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;
 - (ii) membership of a club, health and fitness centre; and
 - (iii) travel benefits extended to employees on vacation such as leave or home travel concession.

Provided that the ITC in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force.]¹⁸

¹⁸Substituted *vide* the CGST Amendment Act, 2018 w.e.f.1-02-2019 & earlier it was:

- (a) *motor vehicles and other conveyances except when they are used—*
 - (i) *for making the following taxable supplies, namely: —*
 - (A) *further supply of such vehicles or conveyances; or*
 - (B) *transportation of passengers; or*
 - (C) *imparting training on driving, flying, navigating such vehicles or conveyances;*
 - (ii) *for transportation of goods;*
- (b) *the following supply of goods or services or both—*
 - (i) *food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;*
 - (ii) *membership of a club, health and fitness centre;*

Compliances of GST in Banking Sector

- (c) works contract services when supplied for construction of immovable property, (other than plant and machinery), except where it is an input service for further supply of works contract service;
- (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account, including when such goods or services or both are used in the course or furtherance of business;

Explanation. - For the purpose of clause (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

- (e) goods or services or both on which tax has been paid under section 10;
- (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
- (g) goods or services or both used for personal consumption;
- (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
- (i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

Explanation. - For the purposes of Chapter V and Chapter VI of the CGST Act, the expression 'plant and machinery' means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes:

- (i) land, building or any other civil structures,
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises

-
- (iii) *rent-a-cab, life insurance and health insurance except where—*
 - (A) *the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or*
 - (B) *such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and*
 - (iv) *travel benefits extended to employees on vacation such as leave or home travel concession;*

Input Tax Credit

Credit utilization [Sec 49(5)]

Credit of:	Allowed for Payment of		
	IGST	CGST	SGST /UTGST
IGST	✓ (1)	✓ (2)	✓ (2)
CGST	✓ (2)	✓ (1)	
SGST /UTGST	✓ (3)		✓ (1)

*The numbers represent the order of utilization of credit. Applicable from 1.07.2017 to 31.01.2019

Further, in terms of section 49(5)(e) and (f), CGST shall not be utilised towards payment of SGST/ UTGST and *vice versa* respectively

With effect 1-02-2019, *vide the CGST Amendment Act 2018 read with Notification No. 02/2019-Central Tax, dated 29-01-2019*, Section 49A and 49B has been inserted.

Section 49A of the CGST Act provides for manner of ITC utilisation, wherein, the Credit of IGST has to be utilised first and only after which, credits of CGST and SGST/UTGST can be utilized.

“49A. Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.”

The full utilization of IGST credit by taxpayer facilitates the Government in the following:

- (a) Reduction of transactions of inter -settlement between the Centre & States.
- (b) Self-utilization of IGST deposited in Consolidated Fund of India through payment route of taxpayer instead of post return calculation

However, it may lead to a situation wherein taxpayer has to pay SGST in cash while his balance in CGST Credit ledger still lying.

Compliances of GST in Banking Sector

Illustration:

Nature of Tax	Tax liability	ITC available
IGST	100(ip)	200 (ic)
CGST	100 (cp)	50 (cc)
SGST	100 (sp)	50 (sc)

	As per Old provision			As per New provisions		
	Tax liability	Paid through ITC	Paid through Cash / Balance Credit	Paid through ITC	Paid through Cash	Balance ITC
IGST	100 (ip)	100 (ic)	Nil	100 (ic)	-	-
CGST	100 (cp)	50 (ic) 50 (cc)	Nil	100 (ic)	-	50 (cc)
SGST	100 (sp)	50 (ic) 50 (sc)	Nil	50 (sc)	50	-

Further, Section 49B of the CGST Act stipulates that notwithstanding anything contained in ITC Chapter V of the CGST Act and subject to section 49(5)(e) and (f) of the CGST, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the ITC on account of IGST, CGST, SGST or UTGST, as the case may be, towards payment of any such tax.

In this regard, w.e.f. 29-03-2019 vide *Notification No. 16/2019 – Central Tax dated 29.03.2019*, Rule 88A of the CGST Rules has been inserted which provides order of utilization of ITC.as:

*“Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax **and** State tax or Union territory tax, as the case may be, in any order:*

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only

Input Tax Credit

after the input tax credit available on account of integrated tax has first been utilised fully.”

Therefore

Credit of:	Liability of ↓		
	IGST	CGST	SGST / UTGST
IGST	✓ (1)	✓ (1)	✓ (1)
CGST	✓ (2)	✓ (2)	
SGST /UTGST	✓ (3)		✓ (2)

*The numbers represent the order of utilization of credit

From above two set of opinion can be drawn:

- Available ITC of account of IGST will first be utilised for payment of IGST, then CGST/SGST and then for SGST/CGST or vice versa
- Available ITC of account of IGST will first be utilised for payment of IGST and then for payment of CGST and SGST (in any proportion).
E.g.,

	ITC available	Labality	ITC Utilization OPTION-I		ITC Utilization OPTION-II
IGST	₹ 2000	₹ 1200	IGST- ₹ 1200	IGST- ₹ 1200	IGST- ₹ 1200
CGST	₹ 500	₹ 1800	IGST- ₹ 800 CGST- ₹ 500 Cash- ₹ 500	IGST- ₹ 0 CGST- ₹ 500 Cash- ₹ 1300	IGST- ₹ 400 CGST- ₹ 500 Cash- ₹ 900
SGST	₹ 300	₹ 1800	IGST- ₹ 0 SGST- ₹ 300 Cash- ₹ 1,500	IGST- ₹ 800 SGST- ₹ 300 Cash- ₹ 700	IGST- ₹ 400 SGST- ₹ 300 Cash- ₹ 1,100

However, the CBIC *vide Circular No. 98/17/2019-GST, dated 23.04.2019* clarified that after the insertion of Rule 88A, the order of utilization of input tax credit will be in any order and in any proportion. The same has been given below:

ITC on account of	Output liability on account of		
	IGST	CGST	SGST/UTGST
IGST	(I)	(II) - In any order and in any proportion	
(III) ITC on account of IGST to be completely exhausted mandatorily			
CGST	(V)	(IV)	Not permitted
SGST/UTGST	(VII)	Not permitted	(VI)

Compliances of GST in Banking Sector

For e.g., - Amount of ITC available and output liability under different tax heads

Head	Output Liability	Input tax Credit
IGST	1000	1300
CGST	300	200
SGST/UTGST	300	200
Total	1600	1700

Option 1:

ITC on account of	Discharge of output liability on account of			Balance of ITC
	IGST	CGST	SGST/UTGST	
IGST	1000	200	100	0
<i>ITC on account of IGST has been completely exhausted</i>				
CGST	0	100	-	100
SGST/UTGST	0	-	200	0
Total	1000	300	300	100

Option 2:

ITC on account of	Discharge of output liability on account of			Balance of ITC
	IGST	CGST	SGST/UTGST	
IGST	1000	100	200	0
<i>ITC on account of IGST has been completely exhausted</i>				
CGST	0	200	-	0
SGST/UTGST	0	-	100	100
Total	1000	300	300	100

Chapter 5

Routine Procedural Checks under GST Regime

Payment dates

In case of bank, GST should be remitted by 20th of the next month.

FORM GST PMT-6 Challan for deposit of GST — valid for 15 days from the date of generation of challan.

Further, interest under Section 50, to be paid in case of failure to pay tax or part thereof to the Government within period prescribed is 18% from the due date of payment to the actual date of payment of tax and 24% in case Excess claim of ITC or excess reduction in output tax liability.

Time limitation for issuance of invoice

Invoice shall be issued before or after the provision of service, but within 45 days from the date of supply of services.

Further, an insurer or a banking company or a financial institution, including a NBFC, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, the tax charged thereon, and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which –

- (a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
- (b) tax invoice may not be issued

Compliances of GST in Banking Sector

Further, as proposed by the Finance Act 2020, the Government on the recommendation of the Council may, specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;

A. In terms of Rule 46 of the CGST Rules, a tax invoice referred to in section 31 of the CGST Act, shall be issued by the registered person containing the following: -

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number, not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters' hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;
- (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than ₹ 50,000/- and the recipient requests that such details be recorded in the tax invoice;
- (g) Harmonised System of Nomenclature code for goods or services;

[As regards the requirement to quote the HSN of the supplies, the annual turnover of the registered person for the previous year shall be referred. In case of suppliers having annual turnover in the previous year: –

- i. Upto ₹ 1.5 Crore – No HSN required;
- ii. Exceeding 1.5 Crore upto ₹ 5 Crore – HSN upto 2 digits required;
- iii. Exceeding ₹ 5 Crore – HSN upto 4 digits required.

Please note that the term ‘*annual turnover*’ has not been defined. Therefore, it may be understood, to be the Turnover in the State as

Routine Procedural Checks under GST Regime

defined in Section 2(112) of the Act, computed for the preceding financial year.

It is also relevant to note that there has been no notification issued in respect of services, separately. However, considering that the term 'HSN' has been used commonly in respect of both goods and services, the aforesaid order can be applied even in respect of services, while quoting the code from the scheme of Classification of Services, as provided in *Notification No. 11/2017-Central Tax (Rate) dt.28.06.2017.*]

- (h) description of goods or services;
- (i) quantity in case of goods and unit or Unique Quantity Code thereof;
- (j) total value of supply of goods or services or both;
- (k) taxable value of supply of goods or services or both considering discount or abatement, if any;
- (l) rate of tax (central tax (CGST), State tax (SGST), integrated tax (IGST), Union territory tax (UTGST) or cess);
- (m) amount of tax charged in respect of taxable goods or services (CGST, SGST, IGST, UTGST or cess);
- (n) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;
- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and
- (q) signature or digital signature of the supplier or his authorized representative:

B. Tax Invoices in cases of special services

Sl. No.	Class of supplier of taxable services	Nature of document	Optional	Mandatory All particulars as specified in Rule 46 other than that specified in 'Optional' column
1	Insurer, Banking	Consolidated Tax	a. Serial no. b. Address of	Consolidation for the supply of services made

Compliances of GST in Banking Sector

	Company, Financial Institution and NBFC	Invoice or any other similar document	the recipient of services	during the month, at the end of the month
2	Goods transport agency (GTA) transporting goods by road	Tax Invoice or any other similar document	None	In addition to those cited in Rule 46; a. Gross weight of consignment b. Consignor and Consignee name c. Regn. No. of Vehicle d. Details of goods transported e. Origin and destination details f. GSTIN of person liable to pay tax whether as consignor / consignee/ GTA
3	Passenger transport agency*	Tax invoice or ticket	a. Serial no. b. Address of the recipient of services	
*Equally applicable to the documents: Bill of supply, receipt voucher, refund voucher payment voucher, revised tax invoice, debit notes and credit notes.				

C. In case of export of goods or services, the invoice shall carry an Endorsement-Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations, the invoice shall carry an endorsement as follows:

1. Where the supply is effected on payment of IGST: “Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations on payment of integrated tax” or
2. Where the supply is effected without payment of IGST: “Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations under bond or letter of undertaking without payment of integrated tax”.

Routine Procedural Checks under GST Regime

Further, for the details of invoice Rule 46 will apply and, in lieu of the details specified in *clause (e) cited supra*, contain the following details:

- (i) name and address of the recipient;
- (ii) address of delivery; and
- (iii) name of the country of destination.

D. Supplies not exceeding ₹ 200/-

A registered person is not required to issue a tax invoice in accordance section 31(3)(b) of the CGST Act i.e. in respect of supply of goods or services or both where the value therein does not exceed a sum of ₹ 200/- subject to the following conditions, namely: -

- (a) the recipient is not a registered person; and
- (b) the recipient does not require such invoice,

However, in respect of such supplies, the supplier shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

Therefore, **Banking companies**

- ✓ may issue tax invoice or any other document, whether serially numbered or not and issue an invoice even without containing the address of the recipient of service but contains the other information as provided by Rule 46 of the CGST Rules.
- ✓ have the option to issue a consolidated tax invoice or any other document in lieu of tax invoice for the supply of services made during a month, at the end of the month, either in physical form or electronically.

NOTE

- A registered person supplying exempted goods or service or both or paying tax under section 10 shall issue Bill of supply. However, registered person may not Bill of supply if such supply is less than ₹ 200 /-
- A registered person shall on receipt of advance payment with respect to any supply shall issue Receipt voucher.
- Further, where at the time of receipt of advance,
 - the rate of tax is not determinable; the tax shall be paid at the rate of 18%
 - the nature of supply is not determinable, the same shall be treated as inter-State supply.

Compliances of GST in Banking Sector

- Where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;
- A registered person who is liable to pay tax under section 9(3) or (4) shall issue a payment voucher at the time of making payment to the supplier.
- Notwithstanding anything contained in Rule 46 or Rule 49 or Rule 54, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "***invoice-cum-bill of supply***" may be issued for all such supplies.

Returns

It is pertinent to mention here that, for smooth implementation of GST and removal/elimination of difficulties, that Government has extended due date of filling return has been extended by Government by issuing various Notifications.

Routine Procedural Checks under GST Regime

Form GSTR	Particulars	Aggregate turnover in the previous financial year	Due Date	Applicable To	
3B	Monthly return	Up to 5 Cr. and registered in	22 th	CATEGORY - 1	
				States	
				Chhattisgarh	Madhya Pradesh
				Gujarat	Maharashtra
				Karnataka	Goa
				Kerala	Tamil Nadu
				Telangana	Andhra Pradesh
				Union territories	
				Daman and Diu	Dadra and Nagar Haveli
				Puducherry	Andaman and Nicobar Islands
				Lakshadweep	
			24 th	CATEGORY - 2	
				States	
				Himachal Pradesh	Punjab
				Uttarakhand	Haryana
				Rajasthan	Uttar Pradesh
				Bihar	Sikkim
				Arunachal Pradesh	Nagaland
				Manipur	Mizoram
				Tripura	Meghalaya
				Assam	West Bengal
				Jharkhand	Odisha
Union territories					
Jammu and Kashmir	Ladakh				
Chandigarh	Delhi				
		Above 5 Cr	20 th	All registered persons	

Compliances of GST in Banking Sector

Form GSTR	Particulars	Due Date	Applicable To
1	Outward Supplies > 1.5 Crore Outward Supplies < 1.5 Crore	11 th of the next month Last date of month subsequent to the quarter	Normal / Regular Taxpayer
6	Monthly Return by ISD	13 th of the next month	ISD
7	Monthly Return for TDS	10 th of the next month	Tax Deductor
9	Annual return	31 st December of the next Financial Year For FY 2018-19 has been extended till 30 th September, 2020	Normal tax payer (other than casual tax payer) For 2018-19, Tax payer having Aggregate turnover of: Upto ₹ 2 cr Optional Above ₹ 2 cr Mandatory [NN 47/2019 C.T. dated 09.10.2019]
9C	Annual return along with the copy of audited annual accounts and a reconciliation statement	31 st December of the next Financial Year For FY 2018-19 it has been extended till 30 th September, 2020	Tax payer having Aggregate turnover of: Upto ₹ 5 cr Optional Above ₹ 5 cr Mandatory

(A) Obligation to furnish information return

Any person, being a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934, is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank

Routine Procedural Checks under GST Regime

account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return ("IR") of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.[Section150(1)(e) of the CGST Act]

Further, if the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in IR is defective, he may intimate the defect to the person who has furnished such IR and give him an opportunity of rectifying the defect within 30 days from the date of such communication of information or within such further period. If the defect is not rectified within the time prescribed, the IR should be treated as not submitted and penalty of Rs.100/- per day for each day during which the failure continues, would be payable subject to a maximum of ₹ 5,000 in terms of section 123 of the CGST Act.

Moreover, if no IR is filed, within the stipulated period, authority may serve a notice requiring him to furnish of such return within a period not exceeding 90 days from the date of service of the notice and such person shall furnish the IR.

Registration

Unlike the concept of Centralized registration available under erstwhile Service tax, under GST regime every supplier effecting taxable supplies, subject to a threshold limit need to take registration.

In terms of section 22 of the CGST Act, every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds ₹ 20 lakh and in case of special category state wherein the registration limit is ₹ 10 lakhs.

However, *vide the CGST, (Amendment) Act, 2018 - w.e.f. 1-02-2019*, second proviso to section 22(1) has been inserted to provide that Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ₹ 10 lakhs to such amount, not exceeding ₹ 20 lakhs and subject to such conditions and limitations, as may be so notified. Further, the CGST, (Amendment) Act, 2018 also amend the expression special category States for the purpose of Section 22. Special Category States shall mean the States

Compliances of GST in Banking Sector

as specified in sub-clause (g) of clause (4) of article 279A of the Constitution, except the State of Jammu and Kashmir **and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.** Accordingly, threshold limit remains ₹ 20 lakhs for the States of Jammu and Kashmir, Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand w.e.f. 1-02-2019 and ₹ 10 lakhs for the States of Manipur, Mizoram, Nagaland and Tripura.

Therefore, now except 4 States, threshold limit for registration is ₹ 20 lakhs for rest all States.

Please note that the proviso to section 22(1) appearing in the CGST Act also appears in SGST Act(s). As a result, for a taxable person in a non-Special Category State, who has a branch in Special Category State, the threshold becomes ₹ 10 lacs and not ₹ 20 lacs.

Further, in case of a person engaged exclusively in supply of goods, as per the third proviso to section 22(1) inserted by *Finance (No. 2) Act, 2019* - w.e.f.1-01-2020, the Central Government may enhance the aggregate turnover from ₹ 20 lakh to ₹ 40 lakh, subject to certain conditions and restrictions as may be prescribed. Similar to the second proviso, this benefit is granted at the request of the State after the same is duly recommended by the GST Council.

Please note, this 'enhanced exemption threshold' will apply if the person is exclusively engaged in supply of "goods" and will NOT apply if "goods and services" both are supplied by such person.

From above it is important to understand the term aggregate turnover. Aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, export of goods or services or both and inter-State supplies of persons having the same PAN, to be computed on all India basis and excludes CGST/SGST, IGST, UTGST and cess.

For calculating the threshold limit, the turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. Further, supply of goods by a registered job worker, after completion of job work, shall be treated as the supply of goods by the "principal" referred to in section 143 (i.e. Job work procedure) of this Act. The value of such goods shall not be included in the aggregate turnover of the registered job worker.

Routine Procedural Checks under GST Regime

Now, it is important to mention that section 23 provides relaxation from the requirement of obtaining registration to two categories of persons

- Agriculturist;
- Persons engaged exclusively in the supply of exempted goods or services or both.

The term exclusive indicates engaging in only those supplies which are exempted. Therefore, if a supplier is supplying both exempted and non-exempted goods and/or services, then this provision is not applicable, and he is required to obtain registration under section 22.

Further, this section also permits any person whose 'entire' supply consists of 'exempt supplies', then such person is excluded from obtaining registration

Notified persons may also be granted an exemption from registration.

Compulsory Registration under GST

Section 24 of the CGST Act provides the categories of persons who shall be required to register under this Act irrespective of the threshold. Two such categories of persons relevant for Banking sector are persons required to pay tax under reverse charge and ISD persons making any inter-State taxable supply; [Please Note *vide Notification 10/ 2017-Integrated Tax, dated 13.10.2017*, persons making inter-State supply of services and having turnover not exceeding ₹ 20 lakhs have been exempted under section 23 from obtaining registration. Accordingly, only persons who make inter-State supply of goods have to compulsorily obtain registration irrespective of the aggregate turnover.

However, the aggregate value of supply of services should not exceed ₹ 10 lakhs in respect of special category Special Category States except the States of Jammu and Kashmir, Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.

- (a) casual taxable persons making taxable supply;
- (b) persons who are required to pay tax under reverse charge;
- (c) non-resident taxable persons making taxable supply;
- (d) persons who are required to pay tax under sub-section (5) of section 9
- (e) persons who are required to deduct tax under section 51 [Tax Deduction at Source];

Compliances of GST in Banking Sector

- (f) person who are required to pay tax under section 9(5) [electronic commerce operator];
- (g) persons who supply goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (h) ISD;
- (i) persons who supply goods or services or both, other than supplies specified under section 9(5), through such electronic commerce operator who is required to collect tax at source under section 52;
- (j) every electronic commerce operator who is required to collect tax at source under section 52 ¹⁹;
- (k) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered;
- (l) Such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Further, the Central Government *vide Notification No. 11/2020 – Central Tax dated 21-03-2020 (“NN 11/2020”)* read with *Notification No. 39/2020 – Central Tax dated 5-05-2020 interalia* provide registration requirement in case of registered persons, who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016, undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), as the class of persons The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration in each of the States or Union territories where the corporate debtor was registered earlier, within 30 days of the appointment of the IRP/RP or by 30th June 2020, whichever is later. However, in cases where the IRP/RP has been appointed prior to NN 11/2020, he shall take registration within 30 days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

Moreover, the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under

¹⁹ *Inserted vide The Central Goods and Services Tax Amendment Act, 2018 - w.e.f. 01-02-2019*

Routine Procedural Checks under GST Regime

section 39 of the CGST Act for all the tax periods prior to the appointment of IRP/RP.

Effective date of Registration

Where the application for registration has been submitted within thirty days from the date on which the person becomes liable to registration, the effective date of registration shall be date on which he become liable for registration.

Where an application for registration has been submitted by the applicant after 30 days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration.

In case of suo-moto registration, i.e. registration pursuant to any survey, enquiry, inspection, search or any other proceedings, the effective date of registration shall be the date of order of registration.

Section 25 read with Rule 8 to 26 of the CGST Rules related to registration provides a detailed road map on the procedural aspects of the registration. The time limit for application is within 30 days (for persons other than casual taxable person or a non-resident taxable person) and casual taxable person or a non-resident taxable person shall have to obtain the registration atleast 5 days prior to the commencement.

Chapter 6

Questionnaire for GST Audit of Banks

Name of the Branch:

GSTIN:

Particulars/information for the year.....

PART A: Basic Details of Assessee	
1.	Name of the Supplier/ Recipient of Supply
2.	Full address of: (Refer Appendix) of the Branch under audit and address of the branches in the State:
3.	List of GST registration numbers in the State with date of registration and nature of registration as Supplier/ Recipient of Supply. (Refer Appendix)
4.	Validity Period of Registration (in case of casual person and NRI)
5.	PAN of Assessee
6.	List principal activities (Refer Appendix)
7.	Is there any change in the activities stated above during the year as compared to immediately preceding year? Whether the same is included in registration (Refer Appendix)
8.	Whether taxpayer has maintained accounts and records in terms of Section 35 -36 of the CGST Act read with Rule 56 to 58 of the CGST Rules. (Refer Appendix)
PART B: EXEMPTION AVAILABLE UNDER CGST/SGST/IGST	
9.	Broad description of nature of Income
10.	(a) Erstwhile service tax law was not applicable in case of J&K but GST is applicable, so check no transaction is left. (b) Are services provided outside India? If Yes, please specify nature of Service and amount involved (Refer Appendix)

Questionnaire for GST Audit of Banks

11.	Broad description of exempted services provided, if any, along with Notification No.(along with Serial No.) and amount Involved (Refer Appendix)
12.	Whether GST is leviable on Transaction in Money under GST? (Refer Appendix)
13.	Whether Securities/ derivatives are exigible for GST? (Refer Appendix)
14.	Whether any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit such as locker rent, folio charges, loan processing fee, late payment fee, lease management fee, rent, management fee etc. are exigible to GST? (Refer Appendix)
15.	Whether the Bank is trading in Commercial paper /Certificates of deposits? If yes, whether any separate charges are collected, and GST being paid on the same and provide details thereon.
16.	Whether GST is levied on late fee charges collected from credit card holders? If yes, then whether GST is being paid on the same and give details thereof. (Refer Appendix)
17.	Banking sector provides services of purchase and sale of foreign currency to its customers, which is exigible to tax under GST regime and the value of which can be ascertained in terms of Rule 32(2) of the CGST Rules. However, (i) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers is exempt <i>vide</i> NN 12/2017-CTR. Check whether transaction of purchase or sale of foreign currency is amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers? If No, then taxable. Check whether the value of supply of services in relation to the purchase or sale of foreign currency, including money changing is determined in terms of Rule 32(2)? (Refer Chapter 1 for Rule 32)

Compliances of GST in Banking Sector

PART C: COMPLIANCE UNDER GST ACT AND RULES, 2017	
❖ In respect of RCM	
18.	<p>REVERSE CHARGE- Broad description of Taxable Services received for which tax has to be paid under reverse charge.</p> <p>Definition has changed (from service tax regime) – “Works Contract” in terms of Section 2(119) of the CGST Act means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.</p> <p>Further, Schedule II of Section 7 of the CGST Act <i>inter alia</i> provides that Works contract is a composite supply to be treated as a supply of services. Therefore, it is important to note that under GST, work contract as service under GST law applies in relation to immovable property only.</p> <p>[Rest RCM provisions discussed in Ch-3]</p>
19.	<ul style="list-style-type: none"> • Whether payment requirement of GST under RCM [Section 9(3)/5(3) and 9(4)/5(4) of the CGST/IGST Act read with rules thereunder and notifications] have been complied? <p>Note- Check compliance of Section 9(4) -pre and post amendment made by the CGST Amendment Act, 2018 (Refer Chapter 3)</p> <ul style="list-style-type: none"> • Whether GST have been paid on advances paid by the banks to the specified registered persons under section 9(3) of the CGST Act such as sponsorship services, GTA services, etc.? • Whether GST have been paid on advances paid by the banks to the unregistered persons under section 9(4)? • Whether in respect of each inward supply where no tax has been paid, is there is a clear disclosure made to the auditors as to the reasons for the tax position taken in each case? Auditor may examine, if the tax position taken requires to be reported in the audit report or other communication? • Whether the credit taken in respect of services covered under RCM is taken only after making payment of GST?

Questionnaire for GST Audit of Banks

❖ In respect of Payment	
20.	<p>(a) Whether payment and ledger entries are made in terms CGST Act and payment rules given in the CGST Rules? [Refer Annexure B (for discharge of liability) and Time of supply provision in Chapter 1 (for determining point of taxation)]</p> <p>(b) If Tax is paid belatedly, specify interest paid on delayed payment under Section 50 of the CGST Act?</p> <p>(c) Whether RCM tax liability is not discharged by utilizing the accumulated ITC?</p>
❖ In respect of ITC	
21.	<p>(a) Whether ITC taken/ utilized is matching with Books of accounts and GST returns. (Annexure A)</p> <p>(b) If the answer of (a) above is negative, Report differences thereof.</p>
22.	Whether ITC credit taken, utilized and reversed on input services / inputs and Capital goods (Annexure C) is the CGST Act read with the CGST Rules?
23.	<ul style="list-style-type: none"> • Whether the head office\branch has not availed depreciation under section 32 of the Income Tax Act, 1961 on the amount of GST on the capital goods on which ITC has been availed? • Whether the bank has taken the ITC in respect of input, capital goods and input services on the basis of proper duty paying documents, containing all particulars as prescribed by CGST Rules read with section 31 of the CGST Act, i.e., serially numbered invoice / bill not exceeding 16 characters, containing the requisite information like, Name, address and GST Number of Bank, Name, address and GST No. of recipient, date of issue, HSN Code of goods, amount of the credit distributed etc.?
24.	List of major Input services /inputs on which the company takes ITC: whether it comply with the CGST Act read with CGST Rules.
25.	<p>Whether credit has been reversed for every month an amount equal to 50% of the ITC availed on inputs, input services and capital goods or ITC has been reversed in respect of exempted supplies on actual basis?</p> <p>Note- such reversal is not required in case of cross charge made to other branches (refer Rule 42 in Chapter-2)</p>

Compliances of GST in Banking Sector

26.	Check whether credit of taxes paid under RCM is availed in the same month (in GST Era) If No, then ensure ITC is availed within the prescribed time as per the CGST Act read with rules made thereunder.
27.	Whether any Credit has been availed on invoice/ credit notes, after the due date of furnishing of the return under section 39 for the month of September of the subsequent financial year or furnishing of the relevant annual return, whichever is latter?
28.	Whether an amount equal to the ITC availed by the recipient added to output tax liability of supplier along with interest, where the recipient fails to pay supplier of goods or services an amount towards the value of supply along with tax payable within 180 days from the date of issue of invoice by the supplier?
29.	Ensure branch/HO maintain details of ITC availed and/or utilized (Refer Appendix)
❖ In respect of ISD	
30.	Month-wise amount of distribution of ITC, if the assessee is registered as an ISD together with address of the unit to which it is distributed. (Applicable to ISD unit). Amount of ITC received from ISD, if any, together with address of the unit from which it is received. (Applicable to recipient unit of ISD) (Refer Appendix)
31.	Whether ITC distributed is in compliance to Section 20 of the CGST Act read with Rule 39 of the CGST Rules? If answer to above is negative, provide the discrepancy in the distribution and reasons thereof. (Refer Appendix)
32.	Every ISD shall, for every calendar month or part thereof, furnish a return in FORM GSTR-6 electronically within 13 days after the end of such month (Refer Appendix)
❖ In respect of Value of Supply	
33.	(i) Value of service provided to persons other than account holders where tax is not charged on the ground that the place of supply is outside the taxable territory. [S.12(12) of IGST Act]

Questionnaire for GST Audit of Banks

	(ii) Value of services exported <ul style="list-style-type: none"> • With payment of IGST and claimed refund • Without payment of IGST under the cover LUT or Bond and claimed refund
❖ Export of Service	
34.	Whether conditions for export of supply of service satisfied to avail benefit of export supply without payment of tax, such benefit is subject to furnishing of LUT/Bond? (Refer Appendix)
35.	Is the payment for services exported received by the service provider in convertible foreign currency within the time limit prescribed by RBI? If not, give details.
PART G- OTHERS	
36.	<ul style="list-style-type: none"> • Check whether GST on sale of vehicles has been paid, which was procured prior to 1st July, 2017 and no ITC was availed in pre GST regime. • Whether GST have been properly charged by the head office, regional offices, zonal offices in case of inter unit / branch transactions? • Whether the registered person have filed the applicable returns on timely basis as notified by the Government? • Whether IGST has been paid on 'import of services'? • Whether Tax wrongfully collected and paid to Central or State Government (inter-State supply considered as intra-State supply or vice versa)? <p>If Yes, State the details of transaction (quantum) [Annexure D]</p>

NOTE: Please also refer Frequently Asked Questions (FAQ) issued by CBIC on Banking, Insurance and Stock Brokers Sector updated as on 27.12.2018 which would assist the auditee in GST Audit.

[http://www.cbic.gov.in/resources//htdocs-cbec/gst/27122018-UPDATED FAQs%20ON%20BANKING,%20INSURANCE%20AND%20STOCK%20BROKERS.pdf;jsessionid=1B50BE18BCC2EFE4C3B9DC77FE9023](http://www.cbic.gov.in/resources//htdocs-cbec/gst/27122018-UPDATED%20FAQs%20ON%20BANKING,%20INSURANCE%20AND%20STOCK%20BROKERS.pdf;jsessionid=1B50BE18BCC2EFE4C3B9DC77FE9023)

54

NAME OF THE ASSESSEE
ANNEXURE A
RECONCILIATION OF TURNOVER FOR THE YEAR.....

GSTR 1: RECON WITH BOOKS		
	Total Credits in statement of profit and loss	XXX
Less:	Not Goods / Not Services - e.g. Dividend Income	(XXX)
Less:	Sch III Items which is not a Supply e.g.: Land & Building etc.	(XXX)
Less:	Receipts Not in the Course of Business	(XXX)
Add:	Sch I Supplies like Branch Transfer not in books, but supply as per GST Law	XXX
Add:	Receipts capitalised but taxable to GST	XXX
Less:	Profit on Sale of Capital Goods	(XXX)
Add:	Taxable Value of Supply of Capital Goods	XXX
Add:	Advance received during the Current Period	XXX
Less:	Advance of earlier period adjusted during the Current period	(XXX)
Less:	Closing unbilled revenue recognised - But Time of Supply did not arise	(XXX)
Add:	Opening unbilled revenue (Billed during the period/Time of supply falls in the month)	XXX
	Total Value in Form GSTR 1	XXX
Less:	Exempted Supply	(XXX)
Less:	Non-Taxable Supplies: Supplies Like HSD, Motor Spirit Etc. including Liquor	(XXX)
Less:	NIL Rated Supply	(XXX)
	Taxable Value in Form GSTR 1	XXX

NAME OF THE ASSESSEE

ANNEXURE B

Details of Discharge of Liabilities

A	Month	CGST				SGST				IGST				Cess			
		Liability	Credit utilized	Cash utilized	Ratio	Liability	Credit utilized	Cash utilized	Ratio	Liability	Credit utilized	Cash utilized	Ratio	Liability	Credit utilized	Cash utilized	Ratio
	Apr																
	May																
	Jun																
	Jul																
	Aug																
	Sep																
	Oct																
	Nov																
	Dec																
	Jan																
	Feb																
	Mar																
	Total																

B	Liability for the month	CGST				SGST				IGST				Cess			
		Liability	Delay	Date of off-setting liability in returns	Interest	Liability	Delay	Date of off-setting liability in returns	Interest	Liability	Delay	Date of off-setting liability in returns	Interest	Liability	Delay	Date of off-setting liability in returns	Interest
	Apr																
	May																
	Jun																
	Jul																
	Aug																
	Sep																
	Oct																
	Nov																
	Dec																
	Jan																
	Feb																
	Mar																
	Total																

ANNEXURE C
Details of Input Tax Credit

A Month	Goods / services on which ITC is eligible (A)				Goods / services on which ITC is ineligible (B)				Total inward supplies	Out of (B), Value of capital goods on which credit is not availed on account of Section 16(3) of the CGST Act <i>(Depreciation claimed on Capital Goods on GST component under the IT Act, 1961)</i>
	Value of Inputs	Value of Input services	Value of Capital goods	Total ineligible	Value of Inputs	Value of Input services	Value of Capital goods	Total eligible	<i>To match with Annex 4</i>	
Apr										
May										
Jun										
Jul										

Aug										
Sep										
Oct										
Nov										
Dec										
Jan										
Feb										
Mar										
Total										

B Out of total of (A), eligible credits on supplies received from related persons and distinct persons

GSTIN of supplier	Nature of relationship	Value of supply		Tax		
		Goods	Services	CGST	SGST	IGST

ITC reversal

A Details of amount of tax credit paid as output tax liability u/s 16 r/w Rule 37, which was reclaimed during the year

Month in which the credit was paid as output liability	Amount of ITC paid as output tax liability u/s 16(2) r/w Rule 37	Amount of credit reclaimed upon payment of consideration											
		Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
PY -3													
PY -2													
PY -1													
Apr		-											
May		-	-										
Jun		-	-	-									
Jul		-	-	-	-								
Aug		-	-	-	-	-							
Sep		-	-	-	-	-	-						
Oct		-	-	-	-	-	-	-					

Nov		-	-	-	-	-	-	-	-	-			
Dec		-	-	-	-	-	-	-	-	-			
Jan		-	-	-	-	-	-	-	-	-	-		
Feb		-	-	-	-	-	-	-	-	-	-	-	
Mar		-	-	-	-	-	-	-	-	-	-	-	-
Total													

B Details of amount of tax credit paid as output tax liability u/s 16 r/w Rule 37, which was reclaimed during the year

Month in which the credit was paid as output liability	Amount of ITC paid as output tax liability u/s 16(2) r/w Rule 37	Month in which the amount of credit should have been paid as output liability u/s 16(2) r/w rule 37											
		Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Apr													
May													
Jun													
Jul													
Aug													

Sep													
Oct													
Nov													
Dec													
Jan													
Feb													
Mar													
Total													

NAME OF THE ASSESSEE

ANNEXURE D

Section 77 of the CGST Act

Details of transactions, where incorrect tax paid

Month	Incorrect tax paid			Appropriate tax applicable			Appropriate tax paid			Refund claimed		
	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST	IGST
Apr												
May												
Jun												
Jul												
Aug												
Sep												
Oct												
Nov												
Dec												
Jan												
Feb												
Mar												
Total												

Appendix

Clarification regarding Questionnaire for GST Audit of Banks

Point No. 2: In GST, there is no Concept of Centralised Registration. State wise registration prevails and each unit in the respective State should be added in the registration certificate classifying as a principal place of business in the State and others as additional place of business.

With effect from 1-02-2019, *vide the CGST Amendment Act, 2018*, the concept of business vertical is deleted. Now separate registration is allowed for multiple business premises within the same State.

Point No. 3: In GST, a service receiver is liable to make payment as a recipient by virtue of section 9(3) of the CGST Act read with NN 13/2017-CTR and Section 9(4) of the CGST Act [read with *Notification No- 07/2019-Central Tax (Rate) dated 29-03-2019 (w.e.f.1-04-2019)* as amended]. [For details refer Chapter 3] The auditor should check whether concerned branch was also registered as a service recipient or not and whether related services were registered with the department.

Point No.6: In order to understand the taxability of various supplies provided by the concerned branch/head office, it is important to identify the various supplies provided by such branch or head office. For this purpose, the auditors may analyse the various income heads (Operating and Non-Operating).

Hence in GST List principal supplies provided by the unit registered assessee i.e., branch need to be taken by auditor from such branch.

Point No.7: It is important to check whether any new service is provided by the concerned branch or head office. If yes, the auditor can check whether the same is updated in the GST Registration Certificate or not? However, GST portal allows addition of Top 5 supplies only. It becomes important because taxability of any activity depends upon its nature and any exemption or relief will be available accordingly.

Point No.8: Section 35-36 of the CGST Act and Rule 56 to 58 of CGST Rules deals with provisions pertaining to accounts and records. Rule 56 of

Compliances of GST in Banking Sector

the CGST Rules provide for the documents with maintenance of accounts by registered persons. Rule 56(7) stipulates that every registered person shall keep the books of account at the principal place of business and books of account relating to additional place of business mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.

Section 36 *interalia* prescribes that, every assessee shall retain the books of accounts and other records until the expiry of 72 months (6 years) from the due date for filing of Annual Return for the year pertaining to such accounts and records. e.g., If the annual returns for the FY 2017-18 are filed on say 31.12.2018, the books of account and other records are to be maintained till 31.12.2024. Even if the annual return is filed earlier, the start date for considering 72 months runs from the end of due date to file the annual return.

In case an appeal or revision or any other proceeding is pending before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, or in case the assessee is under investigation for an offence under Chapter XIX, the assessee shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding or investigation for a period of one year after final disposal of such appeal or revision or proceeding, or for the period specified records under section 35(1), whichever is later

Point No.10: GST is applicable in India including sea water upto 12 nautical miles including Jammu & Kashmir. Therefore, being a destination-based tax GST will apply by application of the provisions of place of supply as classified under the IGST Act, 2017. In case, services are provided outside India the same needs to be ascertained in terms of section 13 of the IGST Act which provide place of supply rules. (*Refer Place of supply provision discussed in Chapter 1*)

Point No.11: Under GST NN 12/2017-CTR as amended from time to time, provides exemption to supply of services under the CGST Act. Parallel to this notification under CGST, Exemption to supply services is given under IGST *vide* NN 9/2017-ITR.

Point No.12: Transaction in money is excluded from the definition of goods and services given under section 2(52) and 2(102) respectively. Since GST is payable on supply of goods and services [charging section] the instant transaction is not exigible to GST. The relevant extract is hereunder:

Clarification regarding Questionnaire for GST Audit of Banks

(52) “**goods**” means every kind of movable property **other than money and securities** but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

(102) “**services**” means anything **other than** goods, **money** and **securities** but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged

Where, Section 2(75) of the CGST Act define money as:

*“**money**” means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value*

However, it is also provided that if any separate consideration is charged by the service provider/supplier, then the same will be taxable and GST shall be payable on such separate consideration.

For e.g. A is carrying 40\$ and wants to convert it in to INR. An approaches to a bank and get an amount of ₹ 40*60 = ₹ 2400. In this case, no separate consideration is charged by the bank and the transaction is merely a transaction in money. However, if the bank recovers an additional amount say ₹ 100 for the same, it will be liable to GST.

Point No.13: Securities/ derivatives are excluded from the definition of goods and services given under section 2(52) and 2(102) of the CGST Act, respectively and hence not exigible to GST.

Where Section 2(101) of the CGST Act defines securities as:

*“**securities**” shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956*

Further, section 2 of the Securities Contracts (Regulation) Act, 1956 defines

“securities” include—

- (i) *shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*

Compliances of GST in Banking Sector

- (ia) derivative;
- (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- (ic) security receipt as defined in clause (zg) of section 2 of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (“the SARFASI Act”);
- (id) units or any other such instrument issued to the investors under any mutual fund scheme;
- (ii) Government securities;
- (iia) such other instruments as may be declared by the Central Government to be securities; and
- (iii) rights or interest in securities.

However, any sort of service charge collected by the supplier of service for such transaction shall be liable for the payment of GST

Auditor can check whether GST is paid by the concerned branch on amount recovered as an additional consideration.

Point No.14: Any services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discounts is mentioned in NN 12/2017-CTR. However, if any additional amount is charged over and above interest or discounts the same would represent taxable consideration *vide* NN 12/2017-CTR.

Services covered under this exemption category are-

- Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- Corporate deposits to the extent that the consideration for advancing such loans and advances are represented by way of interest or discount.

Clarification regarding Questionnaire for GST Audit of Banks

Being an auditor, we can check whether any additional amount is recovered by the concerned branch/head office and the same is accounted for separately instead of treating it as a component of interest/ advance.

As inferred from above (Point 12 to 13), taxability of few services rendered by bank can be summarized as:

Sl.No.	Nature of services	Taxability Status	Remarks
(1)	Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;	No GST Applicable	Covered in Definition of Securities
(2)	Units or any other instrument issued by any collective investment scheme to the investors in such schemes;		
(3)	Units or any other such instrument issued to the investors under any mutual fund scheme;		
(4)	Government securities		
(5)	Security receipt as defined in section 2(zg) of the SARFASI Act		
(6)	Sale of Derivatives	No GST Applicable	Covered in Definition of Securities. However, if any, extra amount is charged in the name of commission, fees, brokerage etc. or any documentation charges, then it will be chargeable
(7)	Future Contracts <i>[Being a financial derivative]</i>	No GST Applicable	
(8)	Forward Contract in Currencies - Where settlement takes place by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date <i>[Being a financial derivative]</i>	No GST Applicable	

Compliances of GST in Banking Sector

Sl.No.	Nature of services	Taxability Status	Remarks
(9)	Forward Contract in Currencies - Actual delivery of underlying currency	Taxable	Treated as normal supply of goods as not covered in definition of securities
(10)	Promissory Notes	No GST Applicable	Covered in Definition of Money. However, if any, extra amount is charged in the name of commission, fees, brokerage etc. then it will be chargeable
(11)	Bill of exchange		
(12)	Issuance of Letter of credit		
(13)	Draft, Pay Order		
(14)	Traveller Cheque		
(15)	Money Order, Postal Or Electronic Remittance		
(16)	Issuance of Bank Statement Charges	Taxable	However, such charge on BSBD account holders under PMJDY.is exempt w.e.f.31.12.2018
(17)	Issuance of Cheque Book Charges	Taxable	
(18)	Charges on Cheque Bouncing	Taxable	
(19)	Ledger Folio Charges	Taxable	
(20)	Stop Payment Charges	Taxable	
(21)	Standing Instruction Charges	Taxable	
(22)	Bank Guarantee Commission Charges	Taxable	
(23)	Demand Draft Issuance Charges	Taxable	
(24)	Documentation Charges	Taxable	
(25)	Processing Fees on Loans	Taxable	
(26)	Sale, Transfer or Assignment of Debts	No GST Applicable	Falls in the purview of actionable claims, which are neither

Clarification regarding Questionnaire for GST Audit of Banks

Sl.No.	Nature of services	Taxability Status	Remarks
			goods nor services as per Schedule III of the Act.
(27)	Bill Discounting	Exempt	By virtue of entry 27(a) of NN 12/2017-CTR and entry 28(a) of NN 9/2017-ITR- To the extent of interest component. However, Commission, fees, brokerage or documentation charges will be taxable.
(28)	Interest and charges on delay/ non-payment of credit card bills	Taxable	By virtue of entry 27(a) of NN 12/2017-CTR and entry 28(a) of NN 9/2017-ITR
(29)	Income from Commercial Paper or Certificate of Deposit <i>[Due to nature of interest]</i>	Exempt	
(30)	Interest/ Discount on Loans / Deposits or Advances	Exempt	
(31)	Conversion charges or commission charge by bank on conversion of foreign currency	Taxable	Covered in definition of service
(32)	Inspection Charges	Taxable	As neither exempt nor excluded from definition of goods and/or services

Compliances of GST in Banking Sector

Point No.16:

Late fee in case of delayed payment of instalment of supply of goods and services shall be included in the value of supply as per section 15(2)(d) of the CGST Act. The same shall be liable to tax under GST

While, late fee in case of delayed payment of instalment of a money to money transaction will be included in the value of supply as per section 15(2)(d) of the CGST Act. The same shall be exempt through serial no 27 of the NN 12/2017-CTR. Therefore, late fee charges in this case shall not be taxable under GST.

[Refer Circular No. 102/21/2019-GST, dated 28-6-2019 read with corrigendum CBEC/20/16/4/2018-GST, dated 15-7-2019]

However, charges received in case of credit card are in the nature of consideration for the services rendered for using the convenience of services by way of a credit card and hence taxable.

Auditor can check whether such late payment charges recovered by the concerned branch are not shown as interest. These charges are taxable and GST shall be levied on the same.

Points 29:

- Under GST regime, Section 17(5) of the CGST Act, 2017 read with CGST Rules provides that ITC shall not be availed in respect of certain supplies. [Details list given in Chapter 5 -Section 17(5)].

Auditor can check whether ITC is not availed on supplies disallowed in GST law.

- As per section 17(4) and 17(2) read with CGST Rules an assessee in banking company or a financial institution including NBFC has to reverse 50% of the amount of ITC on monthly basis OR avail 50% of the eligible ITC on inputs, capital goods and input services in that month and the rest shall lapse. (discussed in Chapter-4)

Auditor can check whether, concerned branch (HO/RO/Designated branch) is reversing the ITC in compliance to the GST Acts read with CGST Rules. Further, we can check whether the rest 50% of the credit in case of GST is lapsed.

- Section 16(2) of the CGST Act, 2017 *inter alia* provides that no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless –
 - (a) he is in possession of a tax invoice or debit note issued by a

Clarification regarding Questionnaire for GST Audit of Banks

supplier registered under this Act, or such other tax paying documents as may be prescribed;

- (b) he has received the goods or services or both
- (c) subject to section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of ITC admissible in respect of the said supply; and
- (d) he has furnished the return under section 39:

Further, where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Where a recipient fail to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Moreover, the recipient shall be entitled to avail ITC on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Point 30 and 31: The concept of ISD has been borrowed into GST from service tax, entitling a person who is registered as an ISD to distribute the credit in respect of input services (and not inputs) received in its name.

- ISD means an office of the supplier of goods or services or both which receives tax invoices towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of CGST, SGST/ UTGST) or IGST paid on the said services to a supplier of taxable goods or services or both having same PAN as that of the ISD.

Generally, the head office, or the corporate office, by whatever name called, would be the location to which the services would be billed. However, there is no implication by law that an ISD must be the head office.

Therefore, a company may choose to have multiple offices based on its business requirements to ensure that the office registered as ISD does not itself undertake any activity in the nature of outward supply, not receive inward supplies of its own or not attract RCM liability.

Compliances of GST in Banking Sector

- Input Service Distributor has to compulsorily register as “ISD” apart from its registration as a normal taxpayer under the Act, wherein he has to specify under serial number 14 of the REG-01 form as an ISD
- Section 20 of the CGST Act read with Rule 39 of the CGST Rules deals with manner and procedure of distribution of credit by ISD. ISD shall distribute the credit of CGST as CGST or IGST and IGST as IGST or CGST, by way of issue of a document containing, the amount of ITC credit being distributed in such manner as may be prescribed and subject to certain conditions. ISD may distribute the credit available for distribution in the same month in which it is availed.
 - As per Rule 39(1)(e) and (f) of the said rules, ISD shall distribute:
 - ◆ ITC on account of CGST and SGST or UTGST
 - in respect of recipient located in the same state shall be distributed as CGST and SGST or UTGST respectively.
 - in respect of a recipient located in a State or Union territory other than that of the ISD, be distributed as IGST and the amount to be so distributed shall be equal to the aggregate of the amount of ITC of CGST and SGST or UTGST that qualifies for distribution to such recipient in accordance with Rule 39(1)(d).
 - ◆ ITC on account of IGST shall be distributed as IGST.
 - the credit can be distributed to recipients of credit against a document containing such details as may be prescribed.
 - the amount of ITC distributed shall not exceed the amount of credit available for distribution
 - the tax credit available against any specific input services used entirely by one of the recipients can be allocated only to that recipient for utilization of such credit and not to other recipients.
 - the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipient(s) to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union Territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period

Clarification regarding Questionnaire for GST Audit of Banks

- the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union Territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.
- Every ISD shall, for every calendar month or part thereof, furnish a return in **FORM GSTR-6** electronically within 13 days after the end of such month
- An ISD need not file annual returns as ISD

Hence, an Auditor can check the following points:

- (a) Ensure every person being an ISD shall make a separate application for registration as such ISD?
- (b) Whether an ISD invoice is issued to each recipient of credit on every distribution in terms of CGST Act read with CGST Rules?

Note - Where ISD is an office of a banking company or a financial institution, including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as prescribed (Rule 46).

- (c) Ensure, Credit distributed does not exceed the credit available for distribution?
- (d) Whether ISD is distributed credit to those taxable persons whose PAN no is same as that of ISD (Under GST)?
- (e) ISD means an office of the supplier of goods or services or both which receives tax invoices towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of CGST, SGST/ UTGST) or IGST paid on the said services to a supplier of taxable goods or services or both having same PAN as that of the ISD.
- (f) Whether credit attributable to a specific unit is distributed to that unit only?
- (g) Whether, Section 20 of the CGST Act is adhered in reference to the manner of distribution of credit by ISD?
- (h) Whether, procedure for distribution of ITC by ISD is adhered?

Compliances of GST in Banking Sector

- (i) Whether, Credit of tax paid on input services used by more than one recipients who are operational is to be distributed to all of them based on the pro rata basis of turnover in a State / Union territory to aggregate turnover of all such recipients who have used such services.
- (j) Ensure that, each type of tax must be distributed through a separate ISD invoice?

Note- However, there is no requirement to issue ISD invoices at an invoice-level (received from the supplier of the service).
- (k) Whether the credit of IGST is to be distributed as IGST irrespective of the location of the ISD?
- (l) Whether the CGST and SGST (or UTGST) is distributed as the CGST and SGST (or UTGST), respectively, where the ISD is located in the same State as that of the recipient?
- (m) Whether turnover for the distribution has been determined in accordance with the CGST Rules?

Point No.34: In terms of section 2(6) of the IGST Act, “*export of services*” means the supply of any service when, —

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [***or in Indian rupees wherever permitted by the Reserve Bank of India***]²⁰; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Auditor should primarily check whether a transaction is export of service. After ascertaining that it is export of service, the auditor should further examine the refund claim on export, where export is made with/without payment of tax but after furnishing LUT in the latter case.

²⁰ *Inserted vide The Integrated Goods and Services Tax (Amendment) Act, 2018- w.e.f. 01-02-2019*

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