

## Exports

### Q 1. How are exports be treated under GST?

Ans. All exports are deemed as inter-State supplies. Exports of goods and services are treated as zero rated supplies. The exporter has the option either to export under bond/Letter of Undertaking without payment of tax and claim refund of ITC or pay IGST by utilizing ITC or in cash at the time of export and claim refund of IGST paid.

### Q 2. What is Zero Rating?

Ans. By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the output exempt from payment of tax, there is no bar on taking/availing credit of taxes paid on the input side for making/providing the output supply. The concept of zero rating of supplies requires the supplies as well as the inputs or input services used in supplying the supplies to be free of GST. This is done by employing the following means:

- a) The taxes paid on the supplies which are zero rated are refunded;
- b) The credit of inputs/ input services is allowed;
- c) Wherever the supplies are exempted, or the supplies are made without payment of tax, the taxes paid on the inputs or input services i.e. the unutilised input tax credit is refunded.

### Q 3. How is zero rated supply different from exempted supply?

Ans. The difference between zero rated supplies and exempted supplies is tabulated as below:

Exempted Supplies	Zero rated Supplies
“exempt supply”	“zero-rated supply”
means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11 of CGST Act, 2017 or under section 6 of the IGST Act, 2017 and includes non-taxable supply	means export of goods or services or both or supply of goods or services or both to a SEZ developer or a SEZ unit as per section 16 of IGST Act, 2017

No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed	No tax on the outward supplies; Input supplies also to be tax free
Credit of input tax needs to be reversed, if taken; No ITC on the exempted supplies	Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply ITC allowed on zero-rated supplies
Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC

Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration

A person exclusively making zero rated supplies may have to register as refunds of unutilised ITC or integrated tax paid shall have to be claimed

A registered person supplying exempted goods or services or both shall issue, instead of a tax invoice, a bill of supply

Normal tax invoice shall be issued

#### **Q 4. Can a person claim input tax credit in case of export of exempted goods?**

Ans. Yes, any zero rated supply is eligible for input tax credit paid by such supplier. As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

#### **Q 5. What is the impact on importer-exporter code(IEC)?**

Ans. All IECs issued with effect from 1.07.2017 reflect PAN as IEC. There will be no separate IEC number allotted to the exporters. PAN number itself would be the IEC number and would be authorised as IEC. The GSTIN is the key identifier at the transaction level. The importer/exporter need to declare only GSTIN (wherever registered with GST) at the time of import/export of goods. The PAN level aggregation of data would automatically happen in the system. The IEC holders shall quote their PAN number (instead of IEC) in all their future correspondence as well as documentation with DGFT.

#### **Q 6. What IEC number is to be used for special category of importers like government, individual importing for personal use etc in terms of para 2.07(b) of Handbook of Procedure by DGFT?**

Ans. DGFT has modified the para 2.07(b) and has allotted revised permanent IEC number for such category of importers vide DGFT Public Notice No. 09/2015-20 dated 29th June, 2017. The same can be used for import /export by the categories of importers/exporters

mentioned therein.

For instance, persons /Institutions /Hospitals importing or exporting goods for personal use, not connected with trade or manufacture or agriculture, earlier using IEC no. 0100000053 now have to use IIE0153E as IEC.

### **Q 7. What is export of goods?**

Ans. The definition of “export of goods” in section 2(5) of IGST Act has been straight taken from section 2(18) of the Customs Act, 1962 and means taking goods out of India to a place outside India.

### **Q 8. What is India in the context of GST?**

Ans. The term “India” as per section 2(56) of CGST Act, 2017 means-

“the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters”

Under Article 1 of the Constitution of India, ‘India’ is defined as under:

1. Name and territory of the Union

- (1) India, that is Bharat, shall be a Union of States
- (2) The States and the territories thereof shall be as specified in the First Schedule
- (3) The territory of India shall comprise
  - (a) The territories of the states
  - (b) The Union Territories specified in the First Schedule
  - (c) Such other territories as may be acquired

Article 1 of the Constitution makes it clear that the territories of the States and that of the Union Territories are fixed in terms of First Schedule to the Constitution. India is a Union of States however the territory of India is not limited to the territories of the respective States but also includes other territories as may be acquired.

The Maritime Zone Act vide section 3(1) thereof provides that the sovereignty of India extends to territorial waters, sea bed and subsoil underlying such waters and the air space over such waters. The limit of territorial waters is fixed at 12 nautical miles from the baseline as per Section 3(2) of the Maritime Zone Act.

The continental shelf of India comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baseline where the outer edge of the continental margin does not extend up to that distance.

The Exclusive Economic Zone ('EEZ') of India is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline.

**Q 9. What is a State in the context of GST?**

Ans. The definition of Union Territory in Article 366 (30) of the Constitution means any Union Territory specified in the First Schedule of the Constitution and includes any other territory comprised within the territory of India but not specified in that Schedule. The territorial water is not referred to in the First Schedule of the Constitution, and therefore, as per the Constitutional provision, territorial waters up to twelve nautical miles is part of Union Territory.

In case of Great Eastern Shipping Company ... vs State of Karnataka and Ors. on 23 January, 2004 before Karnataka High Court, the Court held that State of Karnataka had taxation powers over territorial waters. The matter was appealed against before the Supreme Court and the Supreme Court in Civil Appeal No. 3383/2004 has stayed the order of the High Court. The Hon'ble Supreme Court on 13.1.2016 while hearing this case had observed as follows: "any pronouncement of the court would have far reaching implications not only for central state relationship but the federal character and separation of legislative powers of the union and the States".

The GST Council in its ninth meeting held on 16th January, 2017 took the decision that the territorial water within the twelve nautical miles shall be treated as the territory of the Union of India unless the Hon'ble Supreme Court decides otherwise in the on-going litigation on the issue but the power to collect the State tax in the territorial waters shall be delegated by the Central Government to the States.

Accordingly, for supplies in territorial waters, section 9 of IGST Act gives powers to States to levy GST. Section 9 is reproduced below:

Notwithstanding anything contained in this Act, —

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) where the place of supply is in the territorial waters, the place of supply, shall, for the purposes of this Act,

be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Further, explanation clause to section 25(1) of CGST Act, 2017 on registration provisions provides that every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

**Q 10. Can an exporter purchase goods without payment of tax on furnishing of a declaration form?**

Ans. No, there is no such provision in GST. Tax has to be payable on their inward supplies and they can claim refund of the accumulated ITC. However, there is a 0.1% scheme in which a supplier can supply goods to an exporter by paying only 0.1% GST and claim refund of unutilised ITC. The exporter in such a scenario cannot export on payment of integrated tax and take refund. He has to adopt the LUT/Bond route only.

**Q 11. What is the 0.1% scheme for procurement of exports by merchant exporters?**

Ans. It is a scheme for merchant exporters who have an option to pay nominal GST of 0.1% for procuring goods from domestic suppliers for export vide Notification 40/2017-Central Tax (Rate) and 41/2017-Integrated Tax (Rate) both dated 23.10.2017.

Exemption from payment of GST on so much of the tax leviable on such goods as is in excess of the amount calculated @0.1%, is granted, subject to fulfilment of following conditions:

- Supply on a tax invoice
- Recipient to export goods within 90 days from issue of invoice by supplier
- Recipient to indicate the GSTIN number of the registered supplier & tax invoice number issued by the registered supplier in the shipping bill or bill of export as the case may be
- the registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce
- the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier.
- the registered recipient shall move the said goods from place of registered supplier –
  - (a) directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
  - (b) directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;
- if the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;
- in case of situation referred to in above condition, the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the



acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

- when goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

**Q 12. What are the provisions for refund of taxes for exporters in GST?**

Ans. Provisions relating to refund are contained in section 54 of the CGST Act, 2017. It provides for refund of tax paid on zero-rated supplies of goods or services or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit. Identical provisions exist under the IGST Act, 2017 and relevant SGST/UTGST Acts.

**Q 13. Can unutilized input tax credit be allowed as refund to exporters?**

Ans. Yes. Section 54(3) of the CGST Act, 2017 provides for refund of any unutilised input tax credit of inputs and input services at the end of any tax period except where

? i) the goods exported out of India are subjected to export duty; or

? ii) the exporter claims drawback of CGST or refund of IGST paid on such export.

**Q 14. Will the principle of unjust enrichment apply to exports?**

Ans. The principle of unjust enrichment is not applicable in case of exports of goods or services as the recipient is located outside the taxable territory. However, in respect of supplies to SEZs, section 54(8) has been amended vide CGST (Amendment) Act, 2018 so as to make the principle of unjust enrichment applicable. Thus, from the date of coming of the CGST(Amendment) Act, 2018 into force, the principle of unjust enrichment will be applicable in case of refunds against supplies to SEZs, even though such supplies are zero rated.

**Q 15. What is deemed export under GST Law? Whether any supply has been categorized as deemed export by the Government?**

Ans. Deemed export has been defined under Section 2(39) of CGST Act, 2017 as supplies of goods as may be notified under section 147 of the said Act. Under section 147, the Government may, on the recommendations of the Council, notify certain supplies of goods manufactured in India as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange. Notification No. 48/2017-Central tax dated 18th October, 2017 has been issued

notifying the following supplies of goods as deemed exports.

- (i) Supply of goods by a registered person against Advance Authorisation
- (ii) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
- (iii) Supply of goods by a registered person to Export Oriented Unit
- (iv) Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

**Q 16. What are the documents to be submitted as evidence of supplies as deemed export supplies?**

Ans. A supplier of deemed export supplies has to submit following documents for claiming refund:

- (i) Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
- (ii) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.
- (iii) An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

(Notification No. 49/2017-Central Tax dated 18th October, 2017)

**Q 17. When an exporter cannot use the route of payment of IGST and taking refund under Rule 96 of CGST Rules, 2017?**

Ans. Position from 23rd October, 2017 to 8th October, 2018: An exporter cannot use the route of payment of IGST and taking refund under Rule 96 of CGST Rules, 2017 if he receives supplies on which following benefits are availed:

If Supplier Claims benefit of –

- (i) Deemed Exports( Notn No. 48/2017-CT)
- (ii) 0.1% scheme (Notn No. 40/2017-CT(R) and 41/2017-IGST(R))
- (iii) EOU Scheme (Notn 78/2017-Customs)
- (iv) AA/EPCG etc. (Notn No. 79/2017-Customs)

Position from 9th October, 2018: An exporter cannot use the route of payment of IGST and taking refund under Rule 96 of CGST Rules, 2017 if he receives supplies on which following benefits are availed-



(i) Deemed Exports (Notn No. 48/2017-CT)

(ii) 0.1% scheme (Notn No. 40/2017-CT(R) and 41/2017-IGST(R))

Or, if the exporter avails following benefits-

(i) EOU Scheme (Notn 78/2017-Customs)

(ii) AA/EPCG etc. (Notn No. 79/2017-Customs, except for capital goods)

In the above cases, he needs to avail refund of unutilised ITC as per Rule 89(4A) / (4B)

(Notification No. 54/2018 – Central Tax dated 09.10.2018)

**Q 18. What would be the GST rate if the product procured by merchant exporter at 0.1 per cent is further exported on payment of IGST?**

Ans. The option of payment of IGST and taking refund is not available in case the exporter has procured the goods under 0.1% scheme. He should avail the LUT facility while exporting such goods so that there is no tax liability at the time of export.

**Q 19. Can we export under normal procedure without availing the benefit of 0.1 per cent while procuring goods for exports?**

Ans. Yes, the facility of procuring goods at 0.1 per cent is an optional facility which is available subject to adhering to the conditions mentioned in Notification no. 41/2017-Integrated Tax (Rate) dated 23rd October, 2017. In case, an exporter wants to procure the goods for exports on payment of applicable GST and subsequent exports either on LUT or on payment of IGST, the exporter can do it and claim back ITC or IGST, as the case may be.

**Q 20. Can duty credit scrips received as incentive by exporters such as MEIS, SEIS etc be utilised for payment of all duties at the time of import?**

Ans. No, these scrips can be utilised only for payment of Basic Customs duty and Safeguard Duty, Transitional Product Specific Safeguard Duty, and Antidumping Duty. In case of non-GST supplies like petroleum products etc, the scrips can also be used for payment of duties like central excise, CVD/ SAD.

The scrips cannot be used for payment of any type of GST- IGST/CGST/SGST/UTGST or compensation cess.

**Q 21. How can a manufacturer exporter of exempted goods take input stage credit on raw materials used in the manufacture of exported goods?**

Ans. Under IGST law a person engaged in export of goods which is an exempt supply is eligible to avail input stage credit for zero rated supplies. He needs to choose the Bond/LUT route and not payment of integrated tax route. Once the goods are exported, refund of unutilized credit can be availed under Section 16(3)(a) of IGST Act, 2017 and Section 54 of

the CGST Act, 2017 and the rules made there.

**Q 22. What is the rate of duty on sale of MEIS/SEIS scrips?**

Ans. The MEIS/SEIS scrips are classifiable under HSN code 4907 and the sale of such scrips is exempted vide S. No. 122A of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 35/2017-Central Tax (Rate) dated 13.10.2017.

**Q 23. Whether sale of DFIA scrips liable to GST?**

Ans. As per Notification No. 35/2017-Central Tax (Rate) dated 13.10.2017, “Duty Credit scrips” are exempted from GST. DFIA scrips are not “Duty Credit scrips” and therefore are leviable to GST @ 12%.

**Q 24. Can a person opting for composition scheme make supply of goods to SEZ?**

Ans. No, because all supplies to SEZ are treated as inter-State supplies. A person paying tax under composition scheme cannot make inter-State outward supply of goods.

**Q 25. An exporter gets an order from a Selling agent to whom he pays commission. Will it be taxable under GST?**

Ans. Situation I- Selling agent is located in India: The selling agent in India is providing service to the exporter. Supplier and recipient are in India, therefore place of supply would be governed by the default provision in section 12 of IGST Act, 2017 and would be location of exporter. Thus, it would be taxable in GST.

Situation II- Selling agent is located outside India: The foreign agent, who facilitates the supply of goods, is covered within the definition of intermediary. Since the supplier is outside India and recipient is in India, place of supply would be as per section 13 of IGST Act, 2017. The place of supply of service for services provided by intermediary would be the location of service provider, i.e. the place where he is registered. Since a foreign agent is located outside India and not registered in India, the commission paid to him will not be taxable.

**Q 26. Whether commission received by a buying agent for helping procuring goods from an exporter is exempted from GST?**

Ans. Situation I- Buying agent is located in India: The buying commission received by buying agent in India from the importer overseas in foreign exchange will be taxable as the agent is covered in definition of intermediary and therefore place of supply is in India.

Situation II- Buying agent is located outside India: The buying commission received will not be taxable as place of supply will be outside India.

**Q 27. Does GST be payable on goods not intended to be sold, taken out for participation in overseas exhibitions and trade fairs and brought back into India after exhibition?**

Ans. GST is not payable in such cases. Exporters will need exhibition participation letter and no foreign exchange involved letter from the concerned bank for the purpose of exchange control requirements. At the time of re-import of the subject goods, identity of goods with respect to the export documents needs to be established to seek exemption from import duty in accordance with Customs provisions.

**Q 28. What is e-wallet scheme?**

Ans. Concept of "e-Wallet" is being worked upon by a committee appointed by GST Council. The e-wallet of the exporter would be credited with a notional amount on the basis of the past export performance. An exporter could use the balance in e-Wallet to pay tax liability and then adjust the credit against the refund paid to him. The notional credit in e-Wallet is like an advance refund, with the restriction that this could only be used to pay taxes and would be adjusted against final payment of refunds. The credit in e-Wallet could be used for payment of IGST on imports thus ensuring that there was no additional burden of working capital. As regards payment of GST on domestic purchases, the e-Wallet system would permit transfer of balances from the exporter's account to his supplier's account so that GST could be paid by the supplier on the basis of the amount transferred in his e-Wallet by the exporter. The working capital requirement in the eco-system would get reduced by the amount of the notional credit given in the e-Wallets. This credit would be used to pay IGST, GST etc. The details of the scheme are being worked out and will be announced later.

**Q 29. Whether section 16 of the IGST applicable to exports in respect of compensation cess?**

Ans. Section 11(2) of the GST (Compensation to States) Act, 2017 provides that provisions of IGST Act, and the rules made thereunder, shall, mutatis mutandis, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services as they apply in relation to the levy and collection of integrated tax on such inter-State supplies under the said Act.

Thus, provisions of section 16 of the IGST Act, 2017, relating to zero rated supply will apply mutatis mutandis for the purpose of Compensation Cess. Exporter will be eligible for refund of Compensation Cess paid on goods exported by him and/or no Compensation Cess will be charged on goods exported by an exporter under bond and he will be eligible for refund of input tax credit of Compensation Cess relating to goods exported [on similar lines as refund of input taxes under section 16(3) (a) of the IGST, 2017.

