2020

Editorial on Hot Topics under GST and Income Tax Law - February 2020

EDITORIAL – FEBRUARY 2020

SCS

STRATEGIC CORPORATE SOLUTIONS PRIVATE LIMITED | Delhi

<u>MUDDLE ON INTEREST ON DELAYED PAYMENT (Sec 50(1) of CGST Act 2017)</u>

Recently, the GST authorities has initiated a drive for issuing notices to taxpayers to recover interest on delayed payment of taxes for about Rs. 42,000 Crores.

As per the provisions of sub-section (1) of section 50, every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

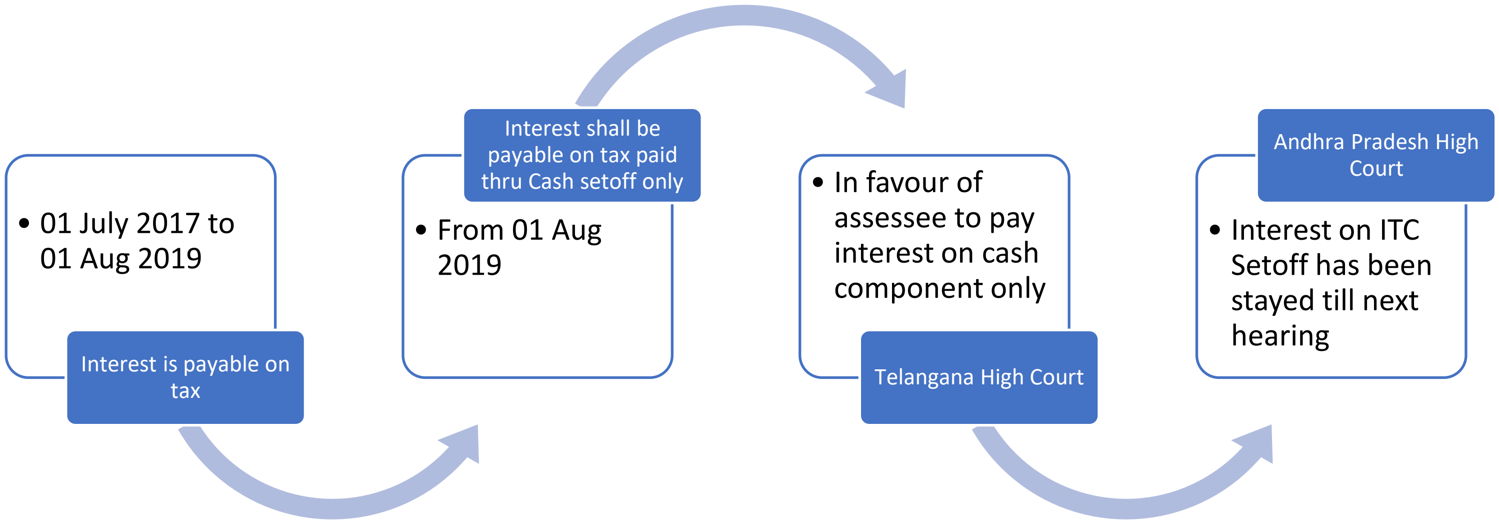
Here the most important word "fails to pay the tax" plays an important role. Payment of tax could be by way of utilization of ITC or utilization of cash balance in cash ledger.

Further, proviso to section 50(1) inserted vide **Finance (no. 2) Act, 2019** dated 01 August 2019 from the date to be notified which read as-

"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39 except where such return is furnished after

*commencement of any proceedings under section 73 or section 74 in respect of the said period, **shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger**.*

With the above proviso, the intention of the Government is clear that the interest was to be charged on tax amount payable by debiting the cash ledger. However, almost considerable time has been elapsed since insertion of proviso to Sec 50(1), but the same is not being notified yet.



On which amount, interest under section 50(1) of the CGST Act shall be levied i.e. on net tax liability (tax paid by cash) or on Gross tax liability in case of delayed payment of tax.

In past few days lot of debate is happening on which amount, interest under section 50(1) of the CGST Act shall be levied i.e. on Net tax liability (tax paid by cash) or on Gross tax liability in case of delayed payment of tax.

Recently, the department has started issuing notice to taxpayer for payment of interest calculated on gross tax liability. Also, CBIC, in its series of tweets, has justified that the Government is recovering the interest on delayed payment as per the prevailing provisions of GST law. It is also mentioned in the tweets that the any amendment to this provision shall be implemented prospectively and not retrospectively. The Government is giving no sign of giving relief to the tax payers as of now. Since, the GST laws permits the interest in case of delayed payment on gross tax liability and also relied on the judgement of **Telangana High Court decision in case of Megha Engineering & Infrastructure Limited** where in it was held that interest u/s 50(1) was chargeable on the gross tax liability. The said judgement was pronounced before proviso to Sec 50(1) was inserted by Finance (no. 2) Act, 2019.

However, recently, Hon'ble **Madras High Court** in its judgement pronounced on 06.01.2020 in case of **Reflex Industries Limited (TS-89-HC-2020 (MAD)-NT),** has held that interest u/s. 50(1) is chargeable on net tax liability i.e. on tax payment in cash after the netting of the ITC available and not on gross tax liability. Also, in case of **Srinidhi Marketing (4769 OF 2020)**, the Hon'ble **Andhra Pradesh High Court** has stayed the interest on 'ITC Set off' component of GST liability.

AUTHORS TAKE:

We have noticed that many taxpayers who has delayed in filing of GSTR 3B had taken a view that interest on delayed payment shall be computed on net tax liability. However, response to the department notices must be taken care wisely. The recourse to the writ petitions can be taken by the tax payers for filing the necessary responses. However, making the payment on net tax liability is advisable.

It is imperative by the CBIC to justify the charging of interest on gross tax liability, where even in erstwhile statutes, the interest was charged on net liability and not on gross amount.

To make this matter un-disputed, the Government should bring the amendment with retrospective effect at the earliest.

Prepared by: CA Deepak Arya and Gaurav Agarwal

E-INVOICE : APPLICABLE ON A CLASS OF TAXPAYERS

What is E-Invoicing?

E-Invoicing is a method of raising the invoices to the customers/clients. Through E-invoicing, data shall be used by the GST authorities for multiple purposes.

Generation of Invoice in a standard format so that invoices generated on one system can be read by another system.

Reporting of e-invoice to a central system.

APPLICABILITY:

E-invoice: Invoice Reference Number (IRN)

- Notification no. 70/2019 dated 13th December,2019
- Every registered person
- Aggregate Turnover > 100 Crores
- W.e.f. 01 April 2020

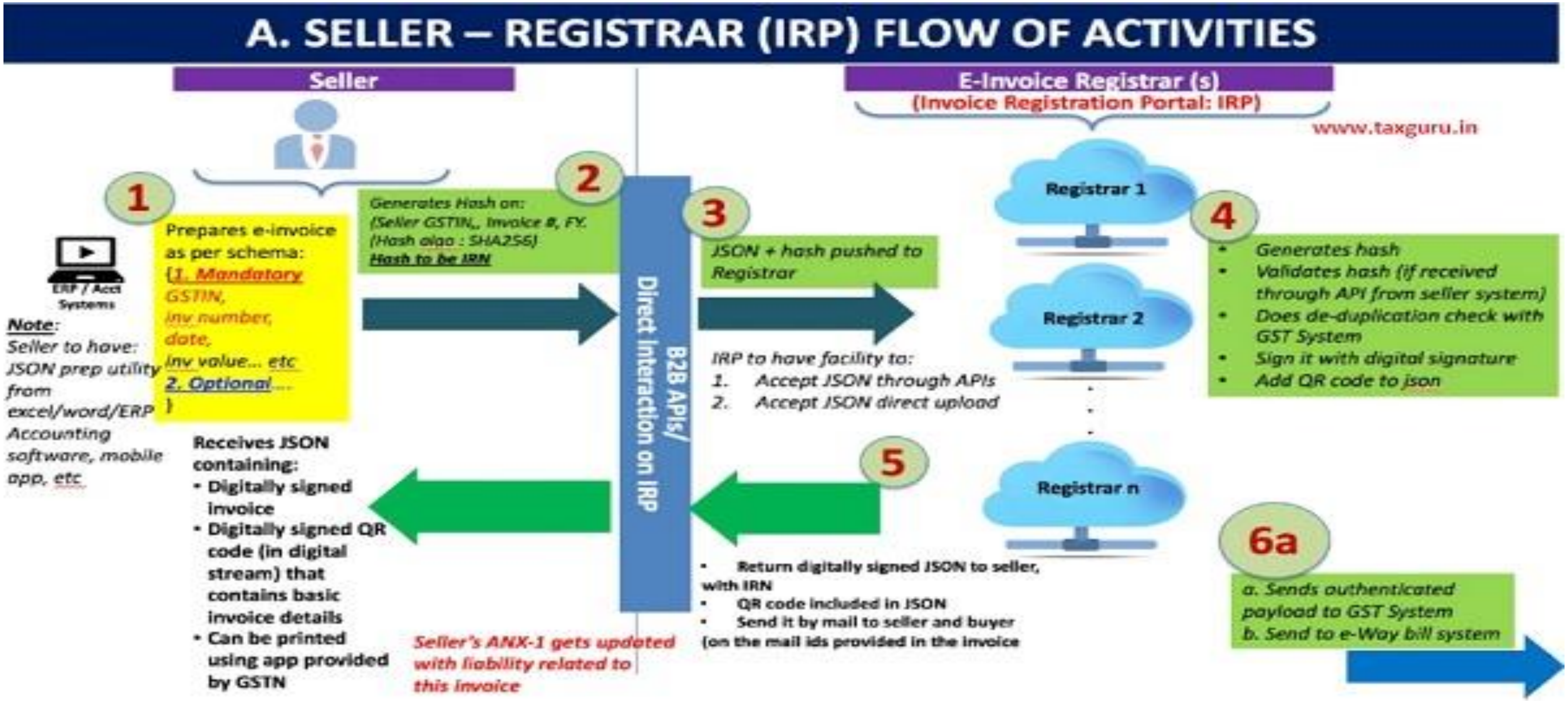
- **To registered person**

<u>QR Code:</u>

- Notification no. 72/2019 dated 13th December, 2019
- Every registered person
- Aggregate Turnover > 500 Crores
- W.e.f. 01 April 2020
- **B2C Invoices**

<u>**Process of E-Invoicing:**</u>

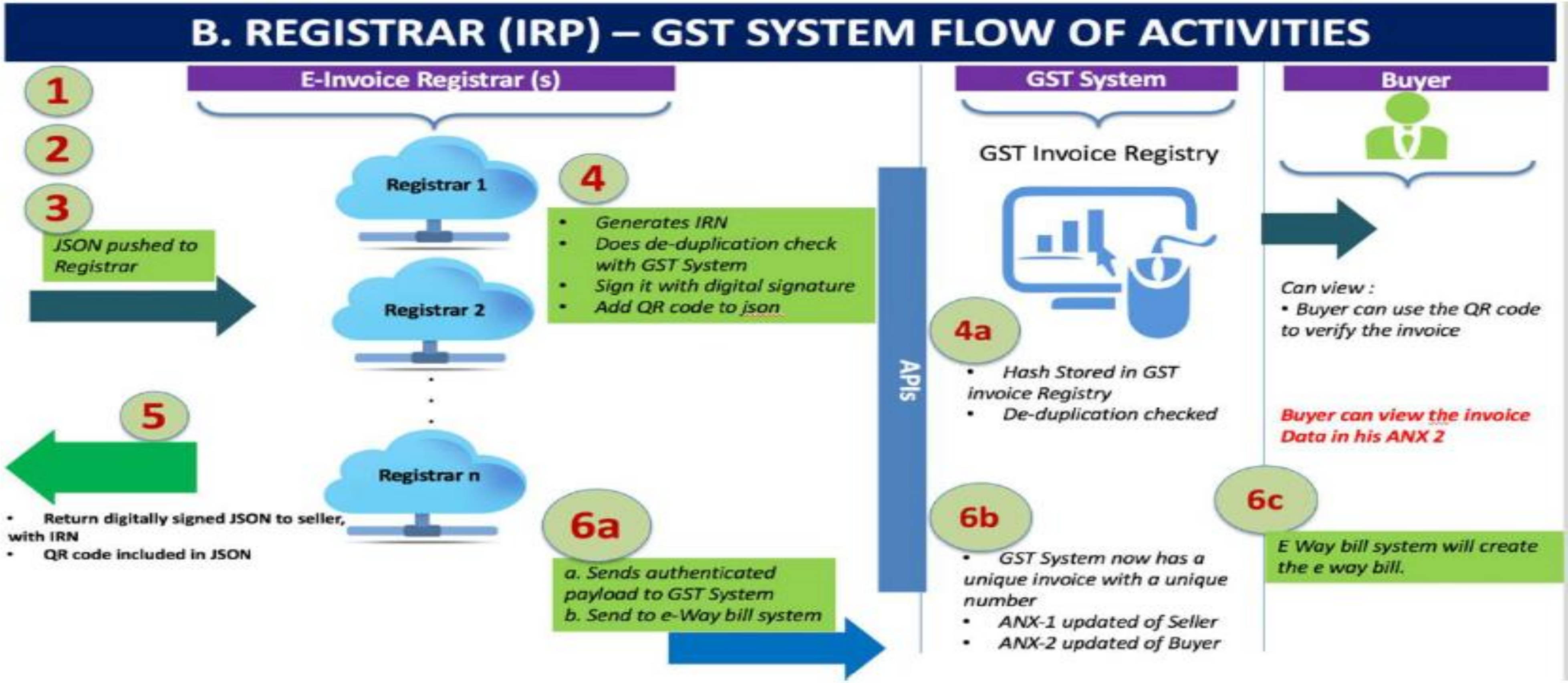
- The first part being the interaction between the business (supplier in case of invoice) and the Invoice Registration Portal (IRP).
- The second part is the interaction between the IRP and the GST/E-Way Bill Systems and the Buyer.



<u>Explanation on PART A:</u>

1. Generation of Invoice by using excel utility provided by e-invoice system under JSON preparation utility.

2. By using Excel utility **generate a JSON** and **upload** the JSON schema directly to Invoice Registration Portal (IRP) or through GSPs or through third party apps.
3. The IRP will generate the hash IRN based on seller's GSTIN, Document Type, Document Number and Financial Year and check the hash from the Central Registry of GST System to ensure that the same document (invoice etc.) from the same supplier pertaining to same Fin Year is not being uploaded again.
4. After confirmation from Central Registry, **IRP will add its signature** on Invoice data as well as **QR code** to the JSON. Return digitally signed JSON to seller, with IRN and QR code.



Explanation on PART B:

6(a). IRP will send the signed and authenticated e-invoice data along with the IRN to the GST system as well as to E-way bill system.

6(b). The GST system will **update the ANX-1 of the seller** and **ANX-2 of the buyer**, which in turn will determine liability and ITC.

<u>Changes in ERP or workings by Supplier and Recipient:</u>

- The supplier shall incorporate IRN as a separate field in the outward supply working for preparation and filing of ANX 1.
- Necessary controls to be enhanced in working as IRN is 64 digits Hash code.
- IRN to be incorporated in inward supply working so that necessary reconciliation can be prepared as and when required with ANX 2.

<u>Use of JSON excel utility for Bulk generation:</u>

E-Invoice system provides a provision of offline method to generate the multiple IRN in one go by the taxpayer.

- Open the E-Invoice system and download the formats provided under ‘Bulk Generation Tool’
- E-Invoice System > Help > Tools > Bulk Generation Tools > JSON Preparation Tools > Excel Utility.
- After filing all the mandatory fields in excel utility, generate JSON file.

- There is an option in e-invoice system to upload Bulk JSON file.
- JSON file should be less than 2 MB.
- After confirming the details click on confirm button and generate the e-invoices.

Mandatory fields in Java utility for generating Invoice reference number:

- Category of supply
- GSTIN of the Supplier
- GSTIN of the recipient
- Trade name of the recipient
- Location, State and PIN code
- Taxable value
- CGST, SGST, UTGST, IGST
- Invoice number
- Invoice date
- Nature of service

- SAC

Some important points:

- E-Invoice will not be generated by the GST Portal.
- The mandatory fields are those that MUST be there for an invoice to be valid under e-Invoice Standard.
- E-Invoice will be authenticated with the digital signature of the IRP.
- JSON file in case of bulk should be less than 2 MB.
- E-Invoice cannot be amended it has to be fully cancelled;
- As far as data on IRP is concerned, it will be kept there only for 24 hours. Hence, the e-invoice can be cancelled from IRP within 24 hours. Cancellation after 24 hours shall be done from GST portal;
- The e-invoice can be accessed by the authorized parties on the GST System in their respective accounts/dashboards after login;
- Trial is available at http://einvoice1-trial.nic.in/

Prepared by: Nidhi Goel

Corporate Tax Rates-Budget 2020

Particulars	Rates of Income Tax
	Assessment Year 2020-21 and 2021-22
Domestic Company	
Co. opting for section 115BAA	22%
Co. opting for section 115BAB	15%
Other Domestic Company	
Co. having total turnover or gross receipt during the P.Y. 2018-19 (for A.Y. 2021-22) and P.Y. 2017-18 (for A.Y. 2020-21) not exceeding Rs.400 crores	25%
Co. having total turnover or gross receipt during the P.Y.2018-19 (for A.Y. 2021-22) and P.Y. 2017-18 (for A.Y. 2020-21) exceeding Rs.400 crores	30%
Company other than Domestic Company	40%

Rate of Surcharge

Particulars	Assessment Year 2020-21 and 2021-22		
	Total Income		
	Upto Rs.1 crore	Exceeding Rs. 1 crore but upto Rs. 10 crore	Exceeding Rs. 10 crore
Domestic Company opting for section 115BAA or 115BAB	10%	10%	10%
Other Domestic Company	-	7%	12%
Company other than Domestic Company	-	2%	5%

Note: Health and Education Cess at the rate 4% shall be charged on the aggregate of income tax and surcharge.

IMPORTANT CONDITIONS

	115BAA (Tax Rate 22%)	115BAB (Tax Rate 15%)	1st Schedule (Tax Rate 25%/30%)
Type of Company	**DOMESTIC COMPANIES OTHER THAN THOSE which are mentioned under section 115BAB**	***NEW MANUFACTURING COMPANY*** ***SET UP & REGISTERED*: on or after 01.10.2019** **Commenced Manufacturing: on or after 31.03.2023**	**ALL OTHER COMPANIES**
Form to be filed	Form 10-IC	Form 10-ID	No Such Requirement
Last date of filing Form 10	on or before due date of filling Return of income tax	on or before due date of filling Return of income tax	Not Applicable
Applicability of provisions of MAT u/s 115JB	Not Applicable	Not Applicable	Applicable
Carry forward and set off of MAT credit u/s 115JAA	Not allowed	Not allowed	Allowed

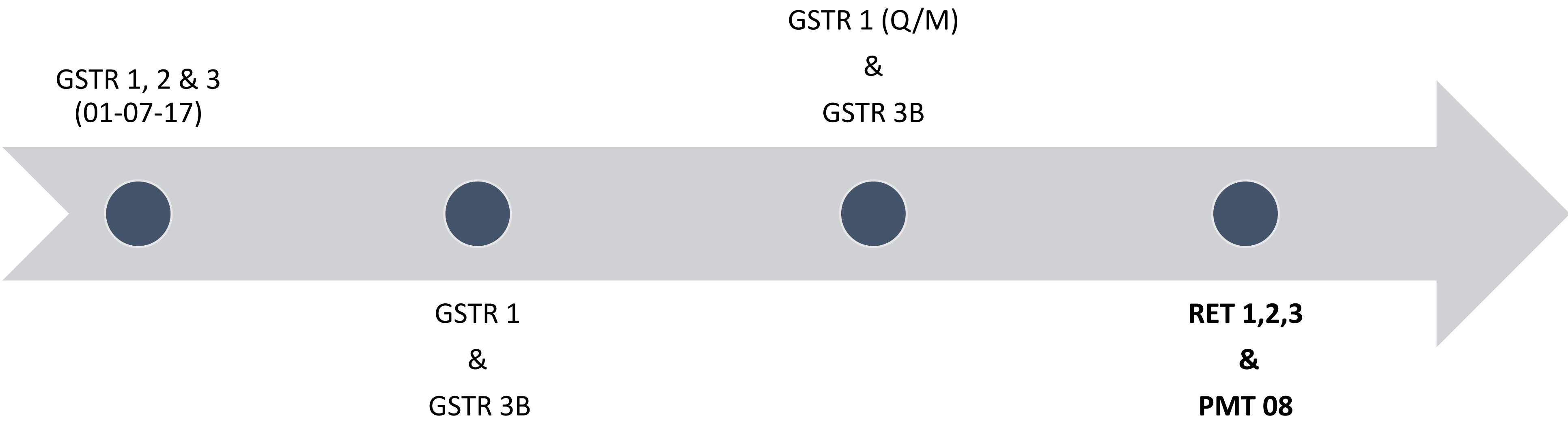
Deduction u/s 10AA* (special provision in respect of newly established SEZ unit)	Not allowed	Not allowed	Allowed
***Deduction u/s 32(1)(iia) / 32AD (Additional Depreciation)**	Not allowed	Not allowed	Allowed
***Deduction u/s 33AB (for deposit in NABARD by business engaged in growing & manufacturing of tea, coffee and rubber in India)**	Not allowed	Not allowed	Allowed
***Deduction u/s 33ABA (for deposit in Site restoration fund by business engaged in prospecting for/extraction of petroleum, natural gas or both in India)**	Not allowed	Not allowed	Allowed
***Deduction u/s 35(1)(ii)/ (iia)/ (iii)/ (2AA) (Expenditure on scientific research)**	Not allowed	Not allowed	Allowed
***Deduction u/s 35AD (for Specified Business)**	Not allowed	Not allowed	Allowed

***Deduction u/s 35CCC (for any expenditure on notified agricultural extension project)**	Not allowed	Not allowed	Allowed
Setoff of any loss carried forward or depreciation from earlier assessment years, if such loss or depreciation is attributable to any of the deductions referred to in (*) above	Not allowed	Not allowed	Allowed
Deduction under Chapter VI-A except Deduction u/s 80JJAA (for new employment)	Not allowed	Not allowed	Allowed

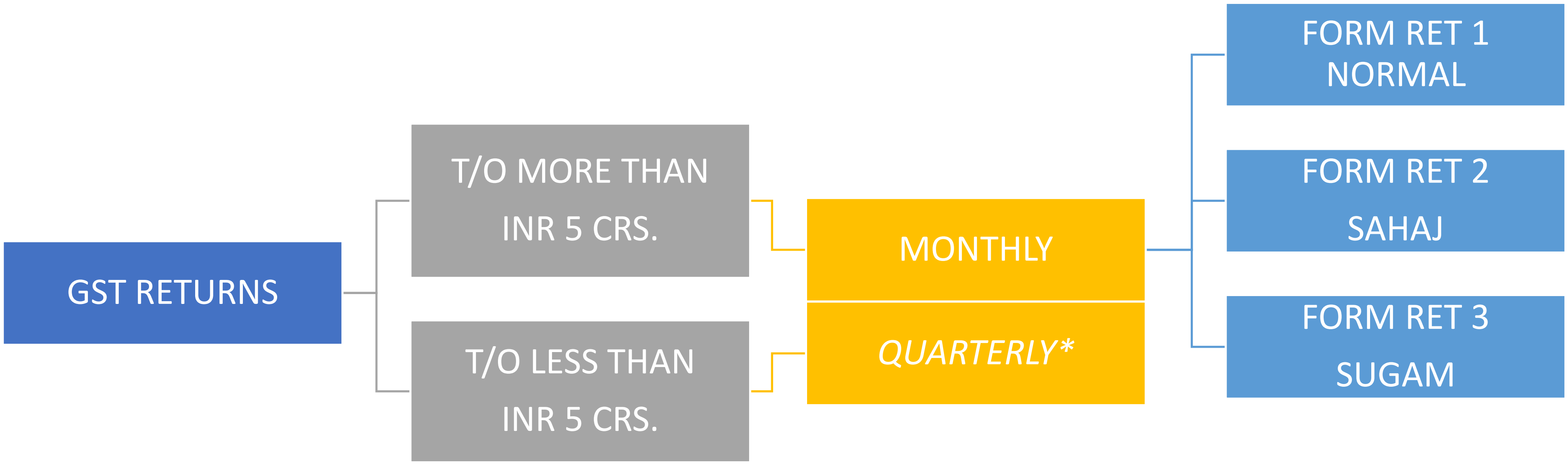
Prepared by : CA Rashi Gupta

New GST Return System : An Overview

Evolution of regular GST returns



Applicability of New GST forms:



**Payment shall be done on monthly basis in Form PMT-08. Also, it is optional to file quarterly*

Features of New GST forms:

WHICH ONE TO OPT FOR?

NORMAL – RET 1

Outward-

B2B, B2C, Exports, SEZ, Exempted, Inward supplies-RCM

ITC of Auto Populated inward supplies shall be available in Anx 2

Inward-

ITC on missing invoices may also be claimed in Anx 2

SAHAJ – RET 2

Outward-

B2C, Exempted, Inward supplies-RCM.

No need to report Exempt, Nil Rates or any such outward supply on which tax not payable.

Inward-

auto populated in Anx 2 and the same shall be reported in RET 2

SUGAM – RET 3

Outward-

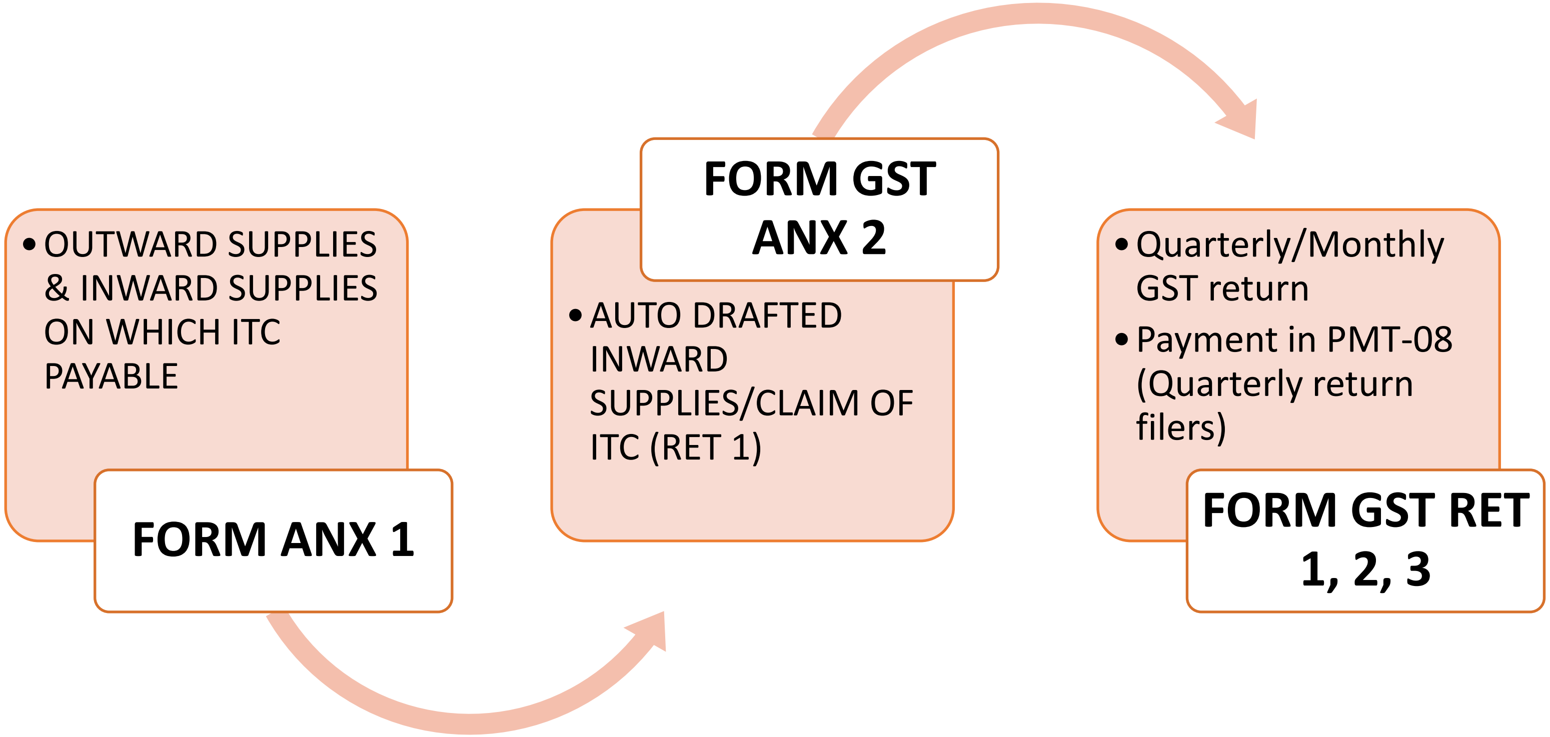
B2B, B2C, Exempted, Inward supplies-RCM

No need to report Exempt, Nil Rates or any such outward supply on which tax not payable.

Inward-

auto populated in Anx 2 and the same shall be reported in RET 3

Flow of information in New GST Return:



The new return system will enhance the free flow of ITC. However, this comes with many caveats. We will further elaborate and analyse the new return format in the next update.

By: CA Deepak Arya

THE INFORMATION IS BASED ON THE GST, INCOME TAX AND OTHER PROVISIONS AND RULES PREVAILING AS ON DATE. ANY AMENDMENT IN THE LAW WOULD CHANGE THE VIEW AS WELL

THIS CANNOT BE READ AS AN OPINION BUT SHOULD BE READ AS A VIEW OF THE AUTHOR. PLEASE DO NOT RELY ON THE CONTENT BEFORE REFERING THE LAW.

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