

Precautions to be taken for Cross Charge, ISD & Schedule I Transactions

PUNE National Conference

FCA Vishal G Poddar

M: 9822504924 e: vishal@ashvalegal.com

BUSINESS AND
CORPORATE



About CA Vishal Poddar

Bharat's


GST ITC

Draft Replies & Internal Controls
(with Accounting Treatments & Documentations)

CA. Vishal G Poddar
Adv. Nitin Sharma
CA. Pooja Garg

Special Thanks for Review
CA. Arun Chhajer


Scan below QR Code for
Free Recorded Course on
GSTR 9 and 9C for FY 2021-22
(Offer valid till 31-3-2023)




Book Highlights

- Blueprint of Drafting
- Replies for ITC Related Notices
- Control Chart - Eligible, Ineligible, Reversal and Blocked ITC
- Due dates of GSTR 3B - Since July 2017 with COVID Relaxation & Amnesty Scheme
- Internal Controls and Reconciliations
- FAQs on New Format of GSTR 3B
- Accounting Entries and ITC Documentations
- TRAN 1 and TRAN 2 Guidelines


Bharat



**NATIONAL
TIOL AWARD
FOR TAXATION**



2022 AWARDS
ENRICHING TAX SPACE



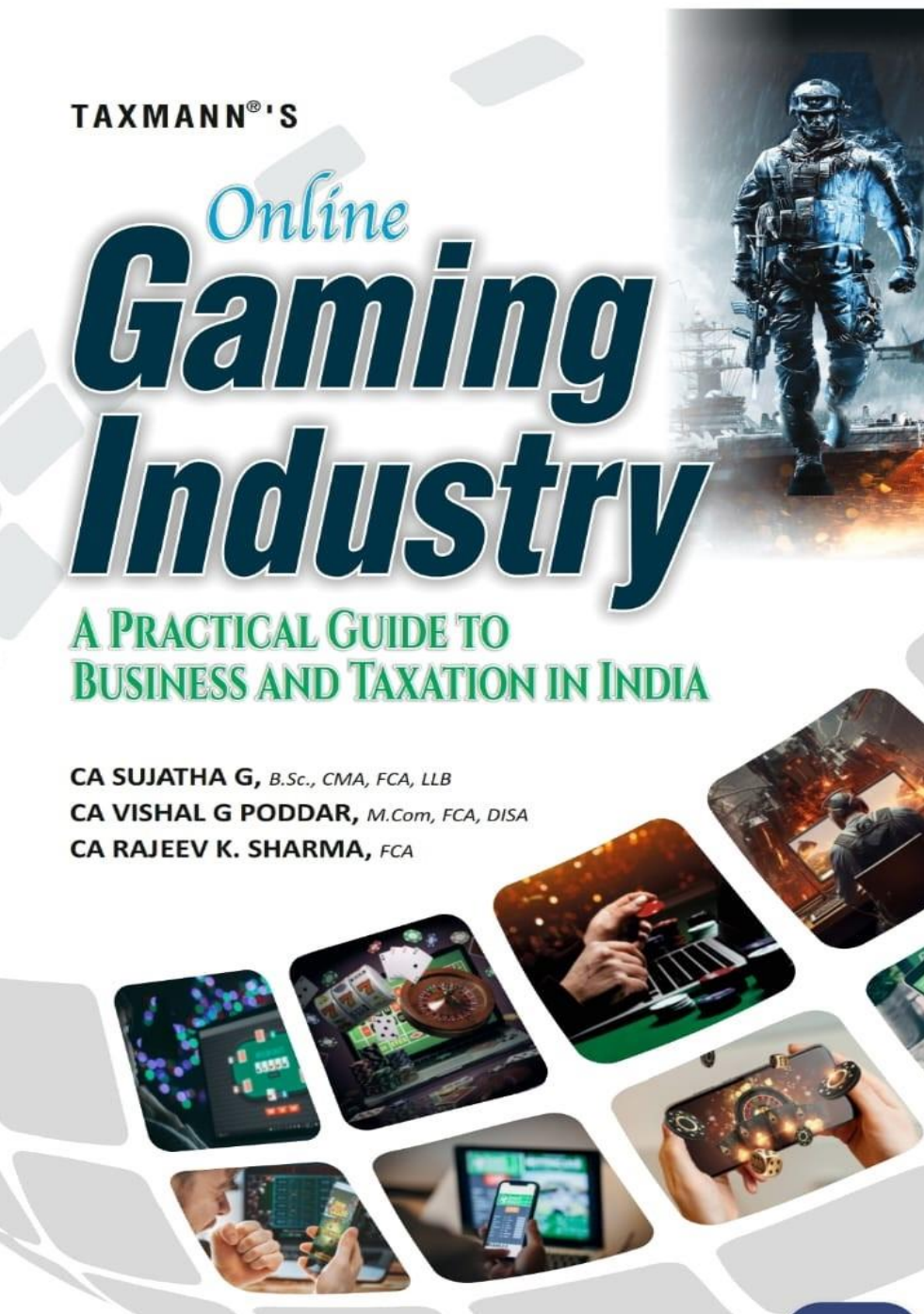
SILVER
FACILITATOR / INTERMEDIARY
CA VISHAL PODDAR

TAXMANN®'S

Online
Gaming Industry

A PRACTICAL GUIDE TO
BUSINESS AND TAXATION IN INDIA

CA SUJATHA G, B.Sc., CMA, FCA, LLB
CA VISHAL G PODDAR, M.Com, FCA, DISA
CA RAJEEV K. SHARMA, FCA



What is GST ?

5 Different GST LAWS

- GST as per Law (Implemented / Proposed/Announced/Press Release)
- GST as per Businessmen
- GST as per Consultants
- GST as per Officers
- GST as per GSTN

GST # BHAGWAT GEETA

Different Interpretations by **DIFFERENT** persons at the **SAME** time

Different Interpretations by **SAME** person at the **DIFFERENT** time periods

SCHEDULE I - ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

- (1) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- (2) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:
Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
- (3) Supply of goods-
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- (4) Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

SCHEDULE I - ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(1) Permanent transfer or disposal of **business assets** where input tax credit has been availed on **such assets**.

- **Pointer 1:** Only "transfer" and "disposal" qualify under this specific category. The other six forms of supply (sale or barter or exchange, licence or rental or lease listed in Section 7(1)(a) do not fall into this paragraph.)

Issue : Can asset transferred for nominal value be covered here ?

- **Pointer 2:** Ordinarily, there can be no permanent transfer in the case of goods sent for job work. However, when a registered person purchases moulds, tools, etc., and sends them to a job worker, there is a significant possibility that these goods may never be returned. This is because the **time limits specified in Section 143** for goods sent for job work **do not apply** to moulds, tools, and other specified goods.

Issue : Whether GST has to be discharged on such Moulds, dies sent which may never be returned back ?

- **Pointer 3 :** Issue: Whether the entry also cover permanent transfer of Services held as assets? Eg. ERP Software, unexpired right in a business franchise permanently transferred?

- **Pointer 4 :** Issue: Whether toleration of a condition or relinquishment of 'right to do business' is business asset. In other words whether Fundamental Rights are business asset ?

SCHEDULE I - ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(1) Permanent transfer or disposal of **business assets** where input tax credit has been availed on **such assets**.

- **Pointer 5:** Issue : If business Inventories are transferred or disposed off, whether schedule I would apply?
- **Pointer 6:** Whether business per se is a business asset?
- **Pointer 7 :** Schedule I Entry 1 Vs Sec 17(5)(h)
*Sec 17(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available **in respect of** the following, namely:-*
 - (h) **goods** lost, stolen, destroyed, written off or disposed of by way of gift or free samples*
- Issue: Where goods (RM, Packing Material, WIP, FG) are given as gifts/donation it would be covered u/s 17(5)(h) or Schedule I?
- Issue: Where business assets are so given away or gift/donation?
- Issue: Where business assets are lost, stolen, destroyed?
- **Pointer 8:** Schedule I Entry 1 Vs Sec 17(5)(fa): *goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under CSR*

SCHEDULE I - ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(2) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Pointer 9: Generally transactions within business components/stakeholders/distinct persons are normally without consideration and are not recorded in Books of Accounts unless the accounting system is so sophisticated enough to capture such transactions. Some important ones requiring considerations are :-

- Stock transfers e.g., transfer of sub-assemblies, semi-finished goods or finished goods.
- Transfer of new or used capital goods/ fixed assets—including movement of laptops when employees are transferred from one location to another.
- Bill-to ship-to transactions wherein the vendor issues the invoice to the corporate office and ships the goods to the branch office.
- Centralised management function like Board of Directors, Finance, Accounts, HR, Legal, Procurement Functions and Other Corporate Functions at one location say Corporate Office and the entity having multiple registrations in various States results in supply of Management Services by the Corporate Office to distinct persons;
- Contract awarded by a customer to an entity at the corporate office from where the centralized billing to the customer is made but the execution of the contract is carried out through various registrations of the same entity located in other/ multiple States.
- Permitting employees/directors/partners to make use of the office assets for personal use – say usage of motor vehicles, laptops, printers, scanners, etc;
- Contractor registered in one State moving machinery for use in project secured by branch in another

SCHEDULE I - ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(2) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

- **Pointer 10** : Entry 1 Vs Entry 2.
- Issue : A transaction involving business asset permanently transferred to a distinct person,

- **Pointer 11** : Whether Entry 2 covers assets procured in the pre-GST regime and supplied to Related/Distinct person ?

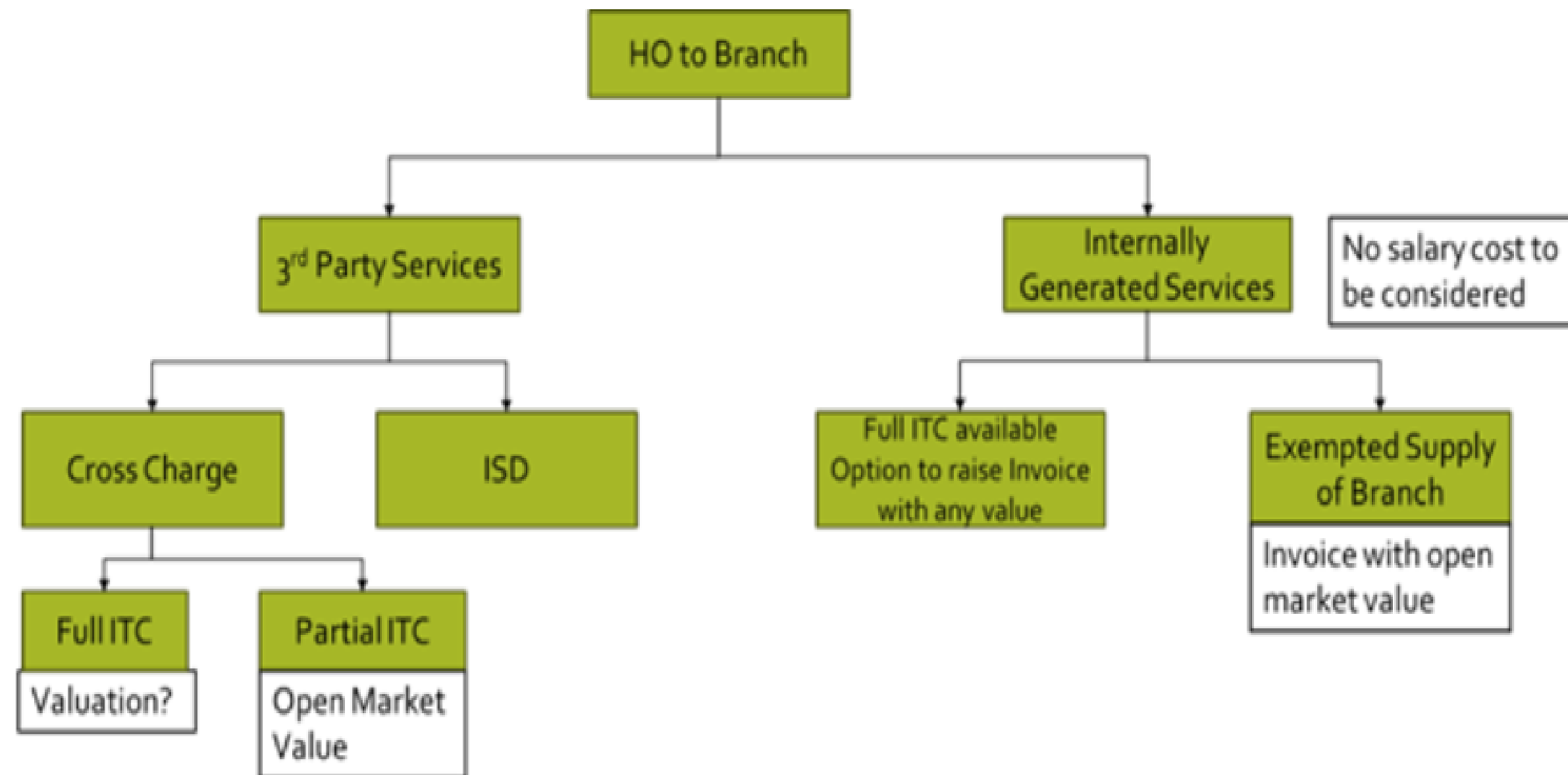
- **Pointer 12 : Gift to Employees upto Rs. 50,000**
- Issue: Whether value up to Rs 50,000 to be understood as inclusive of taxes?
- Issue: Whether the ITC component in Rs.50,000 is eligible or blocked u/s 17(5)(h)?
- Issue: Whether Cash gifts also covered under Rs.50,000 limit?
- Issue: Gifts (other than in cash) exceeding Rs. 5,000 from an employer to an employee are treated as emoluments under income tax law, thus attracting income tax.Ensure consistent tax treatment across different laws to avoid contradictions.

SCHEDULE I - ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(2) Supply of goods or services or both between **related persons** or between **distinct persons as specified in section 25**, when made in the course or furtherance of business:

Pointer 13 : ISD Vs Cross Charge

- Circular 199/11/2023 dated 17-07-2023



SCHEDULE I - ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(2) Supply of goods or services or both between **related persons** or between **distinct persons as specified in section 25**, when made in the course or furtherance of business:

Pointer 13 : ISD Vs Cross Charge

- FA 2024 Amendments:
- Section 2(61) of the CSGT Act, 2017:
- ***“Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20;”***
- Section 20 of the CSGT Act, 2017:
- ***(1) Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.***

SCHEDULE I - ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(2) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Pointer 13 : ISD Vs Cross Charge

- Issues:

- Until now all expenses IGS & TPS both were Cross charged. Now when ISD is compulsory how to take ahead?
- ISD is compulsorily monthly. What about Cross charge?
- How to decide eligibility of ITC in hands of recipient- Audit of ISD is key. Whether PO can ask for details of ISD not under his jurisdiction?
- Can officer deny ITC to ISD for not fulfilling sec 16/ Whether ISD needs to satisfy sec 16 ?
- Whether Credit has to be distributed in the same month? Can it be carried forward?
- ISD application in case where continuous supply of service (SAP installation) is received and the billing is done in different months.
- Cross Charge Vs Fake Invoicing

गौरवशाली था भूत,
भविष्य भी महान है
आप केवल इतना कीजिये
सम्भालिये जो वर्तमान है

Thank You

Name: FCA Vishal Poddar

Email: vishal@ashvalegal.com

Mobile: 9822504924