L&S Update

an e-update to clients from
Lakshmikumaran & Sridharan

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Draft Rules on Transitional Provisions

Draft Rules on Transitional Provisions

- Draft Rules on Transitional Provisions ("Transition Rules") have been placed in public domain on 01.04.2017 for seeking comments from the industry.

- These Rules prescribe the procedure and manner of availing transitional Cenvat credit as available under Clauses 140, 141 and 142 of the Central Goods and Services Tax (CGST) Bill, 2017.

- These rules prescribe various forms and statements to be filed for claiming the transitional benefits. However the ***formats of the above have not been made available in the public domain***.

- The present update covers the highlights of the procedure prescribed under the Transition Rules for claiming the benefit of transitional Cenvat credits.

Transitional Provision Rules

Rule 1(1): Application for tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day

- This sub-rule prescribes the procedure for availing Input Tax Credit under Clause 140 of CGST Bill, 2017:
  - Submit a duly signed application in **FORM GST TRAN-1** electronically on the Common Portal
  - within *60 days of the appointed day*
  - specifying separately, the amount of tax or duty which is eligible to be taken as credit.
- Where inputs have been received from EOU/ unit in EHTP, the credit shall be allowed to the extent as provided in Rule 3(7) of Cenvat Credit Rules, 2004. (i.e. Credit of Additional Duty u/s 3(1) and 3(5) of Custom Tariff Act paid on such inputs is allowed) **[only in CGST Rules]**
- The applicant shall specify separately value of claims made by the applicant during the financial year relating to relevant return u/s 3, 5(3), 6, 6A & 8(8) of Central Sales Tax Act alongwith details of declaration forms. **[only in SGST Rules]**

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Transitional Provision Rules

Rule 1(2)

- This sub-rule entails additional details to be furnished along with the application FORM GST TRAN- 1 submitted under sub-rule(1).

Clause of CGST Bill	Description	Additional requirements
140(2)	ITC of unavailed CENVAT credit of capital goods	➢ Amount of tax or duty ***availed or utilized*** as credit under the existing law till the appointed day ➢ Amount of tax or duty ***yet to be availed or utilized*** under existing law till the appointed day
140(5)	Credit of input or input services during transit	➢ Name of supplier, serial number & date of issue of invoice ➢ Description, quantity & value of the goods or services ➢ Amount of eligible taxes or duties or VAT or entry tax charged ➢ Date on which receipt of goods or services entered in books of accounts

Transitional Provision Rules

Rule 1(2) contd…..

Clause of CGST Bill	Description	Additional requirements
140(3)	Where person was not liable to register under the existing law or other specified person	Details of stock held on the appointed day
140(4)	Relating to exempted goods or services in the existing law	Details of stock held on the appointed day
140(6)	For person who was availing composition scheme under existing law	Details of stock held on the appointed day

Transitional Provision Rules

Rule 1(3): Deemed credit provision for traders and other specified persons

Rules/ Clause	Description	Amount of Credit Allowed
CGST Rules **Clause 140(3)**	➢ Where a trader or any other specified person is not in possession of any document evidencing payment of central excise duty on inputs in stock	• Credit shall be allowed @ **40% of CGST** applicable on supply of such goods after the appointed day. • Such amount shall be credited after payment of CGST payable on such supplies.
SGST Rules	➢ Where a trader or any other specified person holds stock of goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State; and ➢ Such person is not in possession of any document evidencing payment of value added tax on such goods in stock	• Credit shall be allowed @ **40% of SGST** applicable on supply of such goods after the appointed day. • Such amount shall be credited after payment of SGST payable on such supplies

Transitional Provision Rules

Rule 1(3) contd…..

- For availing the deemed credit following conditions are to be satisfied:
  - Such goods were not exempt from excise duty specified under First Schedule to CETA or not Nil Rated or tax under the State Value Added Tax Act;
  - Documents for procurement of such goods are available;
  - In addition to details of stock in rule 2, person shall submit statement in **FORM GST TRAN…** at the end of each six tax periods indicating details of supplies of such goods effected during the tax period;
  - Eligible credit shall be allowed to be credited in electronic credit ledger;
  - Storage of stock of goods is such that it can be easily identifiable.

- The above manner of calculating the credit under Rule 1(3) shall also be applicable to calculate the credit under Clause 140(4)(b).

Transitional Provision Rules

Rule 2: Declaration of stock held by a principal

- Every manufacturer claiming transitional benefits under the provisions of Clause 141 shall submit an application electronically in **FORM GST TRAN-1**, within sixty days of the appointed day specifying the following:
  - Details of stock or capital goods held by him on the appointed day
  - Details of stock or capital goods held by him as a principal at the place/places of business of his agents/branch, separately agent-wise/branch-wise.

Rule 3: Details of goods sent on approval basis

- Every person who had sent goods on approval basis, within six months before the appointed day shall submit details of such goods sent on approval in **FORM GST TRAN-1** within sixty days of the appointed day.

Rule 4: Recovery of credit wrongly availed

- The amount of credit under Rule 1(3) may be verified and proceedings under Clause 73 or 74 shall be initiated in respect of wrongly availed credit.

Transitional Provision Rules

L&S Observations:

The manner of calculation of credit has not been prescribed for the following cases:

- Where credit is available on inputs held in stock & inputs contained in semi-finished or finished goods on the appointed day which relate to goods or services which were exempt under the earlier law but are liable to GST and the person availing credit is not in possession of document evidencing payment of duty on such inputs.**[Clause 140(4)]**

- Where credit is available in respect of inputs held in stock & inputs contained in semi-finished or finished goods on the appointed day to a person who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law but has opted out of such scheme under GST law and such person is not in possession of document evidencing payment of duty on such inputs.**[Clause 140(6)]**

- Where credit is available in respect of both VAT and service tax paid on any supply under the earlier law and GST is also leviable to the extent of supplies made after the appointed day. **[Clause 142(11)(c)]**

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