# Transitional provisions: Carry forward of Credits under GST

The article is first in the series of articles to discuss intricacies of transitional provisions from existing indirect tax laws to Goods and Service Tax (GST) regime. This also highlights various open issues which need to

be addressed timely by government so that there is smooth transition to Goods and Service Tax (GST) without any hiccup.

**Introduction**

Goods and Service Tax (GST) in all likelihood is going to be rolled out in India w.e.f. 1.4.2016. Smooth migration to Goods and Service Tax (GST) would require business to take multiple actions so that all eligible benefits are carried forward in GST regime and proper systems, processes and procedures are envisaged and put in place in advance so as to ensure flawless compliance under the new law.

**Transfer of credits balance from existing Indirect Tax laws to GST regime**

The transitional provisions provides for carry forward of unutilized credits under current law to Goods and Service Tax (GST) regime subject to fulfillment of conditions:

If all the above conditions are cumulatively fulfilled, unutilized credit under current law shall be allowed to be taken to Goods and Service Tax (GST) regime.

**Action plan by Business**

It becomes imperative for businesses to prepare themselves so that they may take their credit benefits to GST without any leakage/loss. Following could be suggested course of actions:

Make all procurement from manufacturers/excise dealers/registered service providers/VAT dealers.

Undertake Cenvat Credit/VAT input Credit review of transactions of at least last one year prior to transition to identify the instances of missed out credits.

All cases of possible liability under reverse charge must be ascertained and tax paid before Goods and Service Tax (GST) so that credit could be migrated. If demand is raised post Goods and Service Tax (GST) in respect of transactions prior to Goods and Service Tax (GST), credit may/ may not be allowed resulting in additional cost.

Payment should be made to all vendors outstanding for period more than 3 months so that cenvat credit in respect of such vendor is allowed (not required to be reversed). There is no explicit provision in the GST law to reavail the credit if payment made post GST.

Any specific forms for charging concessional VAT, if VAT law of any particular state provides, must be obtained prior to GST. If buyer is not able to give, tax should be charged at normal tax rate so that at least buyer could get the credit. If later on (once GST is introduced) buyer is not able to give the form for whatever reasons, seller may have to pay differential tax without corresponding eligibility of credit to buyer.

All credit/debit notes must be settled prior to migration date so that correct credit balance could be ascertained for carry forward.

If any credits were reversed earlier under protest, it should be availed as on transition date and may again be reversed post transition under protest.

If there is doubt/uncertainty as to eligibility of any credits under current law, it may be availed under protest under intimation to department so that credit is not lost warranting carry forward in return.

If any credit is missed out or return not filed on time, it is not certain whether revision of return filed under existing law shall be allowed or not. Hence, returns for all registrations must be filed on time fully capturing the details of credit balance.

Registration under Goods and Service Tax (GST), if allowed to be obtained before roll out date, must be obtained in advance so that credit shown in return could be carried forward to electronic credit ledger automatically.

The inventory balance should be minimized on migration date. This is because a VAT dealer may not be entitled to excise credits under existing law. If inventory is held on migration date and sold post Goods and Service Tax (GST), liability of Goods and Service Tax (GST)would arise without eligibility of corresponding excise credits. If same goods are purchased post Goods and Service Tax (GST), credit of GST would be available to set off against output supply.

There could be many other steps/actions which business may have to take depending upon their business and the applicability of provisions of Central Excise Act, Finance Act 1994, VAT law of particular state, Cenvat Credit Rules and other relevant provision of the law to ensure that credit balance taken is taken properly under Goods and Service Tax (GST) regime. The exercise could be done internally by business or may get it done through professional consultants so that there is neither any leakage nor any ineligible carry forwards.

**Open issues:**

Transition provisions have provided for transition of credits from existing law to Goods and Service Tax (GST). But still there are few issues which have not been unaddressed/remain unclarified:

Transition provision requires that credit may be carried forward if it is allowed under existing law as well as Goods and Service Tax (GST) law. Cenvat Credit is pool in which all credits are accumulated. How to determine the composition of pool as on date of migration to ascertain if it contains any ineligible credits? What method to be followed?

All supplies of goods held in inventory as on transition date, unless exempted or non taxable, would be liable to GST when supplied under Goods and Service Tax (GST). But a VAT dealer is not allowed to take the credits of excise duty paid on such goods. When supply of such inventory would be subjected to Goods and Service Tax (GST), is it not unfair not to allow excise credits?

Whether unutilized Education Cess (including SHECess) balance could be allowed to be carried forward as cenvat credit?

Whether excise dealer also allowed carrying forward credits under this provision as there will not be any concept of dealer under Goods and Service Tax (GST)?

Whether any details need to be furnished to department for credit carried forward or mere disclosure in the return is sufficient?

Manufacturer of exempted goods/services provider providing exempted service is required to reverse the credits under Rule 6 of Cenvat Credit Rules, 2004. There is time limit upto 30th June of next financial year to determine amount to be reversed finally. Whether such time would be eligible at the time of migration also or adjustment needs to be made in the return preceding appointed day?

If credit is inadvertently missed out to be disclosed in the return, whether there would be provision to allow the revision of return filed under existing law so that correct balance could be taken?

A service provider engaged in providing services from multiple locations and registered as centralized registration may have credit balance. Such person may require taking statewise registration under Goods and Service Tax (GST). How shall the credit balance on migration be apportioned among various units of assessee in different state? Whether option would be allowed to set off the credit balance against liability arising in any of the states?

It is understood that cenvat credit shall be carried forward as CGST credit and VAT credit as SGST. In case excisable goods/services are procured interstate, whether it shall be allowed to be taken as IGST under Goods and Service Tax (GST)?

**Conclusion**

There is urgent need for business to take adequate steps timely. Any delay could directly result in loss/leakage of credits. It is also equally imperative to make representation before government to clarify all the open issues so that business is not put to state of confusion.

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