

Statutory Update for Tax / 1 Nov 2022 to 30 Apr 2023 / For CA Inter Nov 2023

YouTube video: <https://youtu.be/BLV9L4iBswU>

INCOME TAX

PAN-Aadhaar linking (Para 239.2 - Content amended)

239.2 Quoting of Aadhaar Number [S. 139AA, 234H, R. 114, 114AAA]

Quoting Aadhaar: Every person who is **eligible to obtain** Aadhaar number, is required to quote Aadhaar number, in:

1. In the application form for allotment of PAN;
2. In the return of income.

If the person does not possess Aadhaar number, the Enrolment ID of Aadhaar application form issued to him at the time of enrolment should be quoted.

Aadhaar-PAN linking: Every person who has been allotted PAN as on 1.7.2017 and who is eligible to obtain Aadhaar number, is required to **intimate** his Aadhaar number to the prescribed authority in the prescribed manner **on or before 31.3.2022**. This is called Aadhaar-PAN linking. In case of failure to do so, the following consequences arise:

Date of intimation	Consequences
On or before 31.3.2022	No consequences
From 1.4.2022 to 30.6.2022	Fee of Rs. 500 is payable u/s 234H at the time of intimation; PAN remains operative
From 1.7.2022 to 30.6.2023	Fee of Rs. 1,000 is payable u/s 234H at the time of intimation; PAN remains operative
From 1.7.2023	PAN becomes inoperative with further consequences [see Note]. PAN can be made operative upon intimation. Fee of Rs. 1,000 is payable u/s 234H at the time of intimation. PAN shall become operative within 30 days from the date of such intimation.

Note: A person, whose PAN has become inoperative, is liable for the following further consequences. These consequences apply for the period from **1.7.2023** till the date PAN becomes **operative**:

1. Refund of any amount of tax (or part thereof), due under the provisions of the Act is **not** made to him;
2. Interest is **not** payable on such refund for the period, beginning with **1.7.2023** and ending with the date on which it becomes operative;
3. Where TDS is deductible in case of such person, it is deducted at **higher** rate u/s 206AA [para 218A.1];
4. Where TCS is collectible in case of such person, it is collected at **higher** rate u/s 206CC [para 224].

Exemption: The aforesaid requirements of section 139AA (i.e., quoting of Aadhaar and Aadhaar-PAN linking) and consequences of PAN becoming inoperative **do not** apply to an **individual** who **does not** possess the Aadhaar number (or the Enrolment ID) **and** is:

1. **Residing** in the States of Assam, Jammu and Kashmir and Meghalaya;
2. A **non-resident**;
3. Of the age of **80 years** or more at **any time** during the PY;

4. **Not** a citizen of India.

Notwithstanding the fact that Aadhaar number is to be intimated on or before 31.3.2022, it is mandatory to quote Aadhaar number while filing return, from 1.4.2019 onwards, unless specifically exempted as referred above. Thus, returns being filed either electronically or manually cannot be filed without quoting such number. [*Circular 6/2019*].

GST

SUPPLY / VALUE OF SUPPLY

Taxability of NCB (Para 20.1 - Content added)

20.1-8 No claim bonus (NCB) offered by insurance companies

Insurance companies deduct NCB from gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is **not** under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.

Thus, there is **no supply** provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB **cannot** be considered as a **consideration** for any supply provided by the insured to the insurance company. Also see para 71 for exclusion of NCB from value of supply.

CHARGE

RCM extended to Courts/Tribunals (Para 31 - Content amended)

31. REVERSE CHARGE FOR NOTIFIED SERVICES U/S 9(3)

Tax is payable by the recipient under RCM on supply of notified services discussed in the Tables given below.

Points to note

Entry numbers referred in the RCM Tables given below refer to the Entry of the RCM Notification.

Certain services may be exempt from tax. Exemptions are covered in Chapter 4. These are not considered in the discussion below. Tax is not payable (whether under RCM or under forward charge) if the service itself is exempt from tax.

The term 'body corporate' used in the RCM provisions discussed below *includes* a company incorporated **outside** India, but *does not include* a co-operative society (registered) and any other body corporate notified in this behalf [*S. 2(11) of Companies Act, 2013*].

The provisions given below, in so far as they apply to **CG** and **SG**, also apply to the **Parliament, State Legislatures, Courts and Tribunals**.

31.3 GOVERNMENT SERVICES

Entry No.	Category of supply of services	Supplier of service	Recipient of service
5 – Government services	Services supplied by CG/SG/UT/LA.	CG/SG/UT/LA	Any business entity located in the taxable territory.

Following services are **excluded**:

1. Renting of **immovable** property. *It is covered under Entry 5A given below.*
 2. Services by **Department of Posts**. *However, certain basic services are exempt (para 46).*
 3. Services in relation to an **aircraft** or a **vessel**, inside or outside the precincts of a port or an airport.
 4. **Transport** of goods or passengers.
- RCM is not applicable in the above listed cases and tax is payable by CG/SG/UT/LA under forward charge (except Entry 5A).

5A – Renting	Renting of immovable property.	CG/SG/UT/LA	Any person registered under CGST Act
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Renting of immovable property - It means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and *includes* letting, leasing, licensing or other similar arrangements in respect of immovable property.

RCM does not apply to recipient if not registered under GST, even if it is a business entity.

Government services are exempt in certain cases [para 46]. RCM does not apply where the service itself is exempt from tax.

Note: As referred in the 'Points to Note' box above, the provisions, in so far as they apply to CG and SG, also apply to the Parliament, State Legislatures, **Courts and Tribunals**. Thus, for example, taxable services supplied by Courts or Tribunals such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers, etc., is taxable under RCM.

EXEMPTIONS

Renting of residential dwelling (Para 53 - Content amended)

12 – Residence	Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person .
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Exception: Although services by way of renting of residential dwelling to a registered person are not exempt, these are still exempt where, -

1. **the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and**
2. **such renting is on his own account and not that of the proprietorship concern.**

There is no monetary threshold or limit for exemption under this Entry.

To be exempt, property rented out should be residential dwelling, renting should be for use as residence and it should be rented to an unregistered person (also see exception above in case of a sole proprietor).

The following combinations arise:

Property rented out	Purpose of renting	Rented out to	Exempt
Residential	Residential	Unregistered person	Yes
		Registered person	No*
	Non-residential	Unregistered person	No
		Registered person	No
Non-residential	Residential	Registered or unregistered person	No
	Non-residential	Registered or unregistered person	No

*See exception above in case of a sole proprietor.

Black box – Tax is payable under RCM by the recipient of service [para 31.4].

Stay in a hotel, inn, guest house, etc., is not covered by this Entry and is, thus, not exempt.

Entry 23A (Para 53 - Content deleted)

23, 23A – Toll	Service by way of access to a road or a bridge on payment of toll charges [Entry 23] or annuity [Entry 23A].
<p>This entry covers access to a road within its scope. Thus, annuity (i.e., deferred payments) paid for construction of roads is not exempt [Circular 150/06/2021-GST].</p> <p>Overloading charges at toll plaza are effectively higher toll charges and, hence, also covered by the exemption. [Circular 164/20/2021-GST]</p> <p>Additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and is, thus, covered by the exemption. [Circular 177/09/2022-TRU]</p>	

Conduct of entrance exams by NTA, etc. (Para 44 - Content added)

2	Services provided by National Testing Agency, etc. by way of conduct of entrance examination	Any authority, board or body set up by CG or SG including National Testing Agency for conduct of entrance examination for admission to educational institutions is treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions. Therefore, such services are exempt.
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Accommodation services supplied by Messes (Para 46 - Content amended)

6, 7, 8, 9, 24C – Services provided by CG, SG, UT, LA	The following Table lists the services which are exempt (v) and which are not exempt (X). This is dependent on the nature of service and the recipient.					
	#	Services provided by <u>CG/SG/UT/LA</u> ↓	Recipient			
			A: Business entity (ATO ≤ registration threshold*)	B: Business entity (not being 'A')	C: CG, SG, UT, LA	D: Others
	1	Services by the Department of Post:				
		<i>By way of post card, inland letter, book post and ordinary post (envelopes weighing < 10 grams)</i>	v	v	v	v
		<i>All other services</i>	X	X	X	X
	2	Services in relation to an aircraft or a vessel , inside or outside the precincts of a port or an airport	X	X	X	X
3	Transport of goods or passengers	X	X	X	X	
4	Renting of immovable property	X**	X**	v	v	
5	Other services	v	X**	v	v	

*Business entity with aggregate turnover (ATO) of up to such amount in the **preceding FY** as makes it eligible for **exemption** from **registration** under GST [para 88.4].

Services are **exempt if the consideration for such services $\leq 5,000$ [$\leq 5,000$ in a FY, where **continuous** supply of service is provided (para 62.2)].

Black box – Tax is payable by business entity under RCM in cases within black box – Under Entry 5A of RCM for renting of immovable property, where recipient is a registered person. Under Entry 5 of RCM for other services, where recipient is a business entity located in the taxable territory [see para 31.3].

Services by Department of Posts (#1) - Only basic services are exempt as listed in the Table above. All other services are taxable (for example, speed post, express parcel post, life insurance, agency services, ordinary post (envelopes weighing ≥ 10 grams), etc.)

Renting of immovable property (#4) – For meaning, refer para 31.3.

Air Force Mess: Accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are **exempt** as per the above Table provided the services qualify as services supplied by CG/SG/UT/LA [Circular 190/02/2023-GST].

Threshold of Rs. 5,000 does not apply to services referred in #1 to #3. If consideration is $>$ threshold of Rs. 5,000, entire consideration is taxable, not the excess over Rs. 5,000.

Transport of goods or passengers is exempt in certain cases. See paras 49, 50.

INPUT TAX CREDIT

Reversal of ITC on non payment of consideration (Para 75 - Content amended)

75. REVERSAL OF ITC IN CASE OF NON-PAYMENT OF CONSIDERATION [S. 16(2); R. 37]

The registered person, who has availed of ITC on any inward supply of goods and/or services, should pay to the supplier, the amount towards the **value** of such supply along with the **tax** payable thereon, within a period of **180 days** from the date of **issue of invoice** by the supplier.

Upon failure to pay such amount, such registered person is liable to pay or reverse an amount equal to the ITC availed in respect of such supply, along with interest payable thereon, while furnishing GSTR-3B return [para 119] for the tax period immediately following such period of 180 days. In case part of the amount is not paid, the amount of ITC to be paid or reversed is determined proportionately.

The registered person can **re-avail** the ITC where he subsequently makes payment of the amount towards the value of such supply along with tax payable thereon to the supplier. Time limit u/s 16(4) [para 77] **does not** apply in such case.

The condition of aforesaid payment within 180 days **does not apply** to the following:

1. Supplies on which tax is payable under **RCM** [para 29].
2. Supplies made **without consideration** as specified under Schedule I [para 19].*
3. Addition to value of supply made u/s 15(2)(b) on account of payment to **third parties** [para 70.2].*

*The value is deemed to have been paid in these cases.

Thus, a registered person can avail ITC upon receipt of goods and/or services even without making payment of consideration for the supply along with tax thereon. However, the payment should ultimately be made within 180 days from the date of issue of invoice. If this is not done, ITC would be reversed (along with interest).

180 days start from the date of issue of invoice, not from the date of delivery of goods or provision of service or the last date for issue of invoice u/s 31.

180 days are to be counted in terms of days. This is not the same as 6 months.

Tax charged on supply to be paid to Government (Para 74.4 - Content amended)**74.4 Condition 5 – Tax charged on supply is actually paid to Government [S. 16(2)(c); R. 37A]¹**

As per section 41 [para 72.4], a registered person can avail ITC on **self-assessment** basis in his return. Such ITC is credited to his electronic credit ledger and can be utilised for payment of output tax.

However, one of the conditions to avail ITC is that the tax charged in respect of the supply should have been **actually paid** to the Government, either in cash or through utilisation of ITC admissible in respect of the said supply.

Thus, the ITC availed by the registered person in respect of the supply, the tax payable whereon has not been paid by the supplier, is required to be reversed along with interest. ITC, so reversed, can be re-availed where the supplier makes payment of tax. Rule 37A provides for reversal and re-availment of ITC as follows:

Situation covered: Rule 37A covers the following situation:

1. ITC has been availed by registered person in GSTR-3B return for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in GSTR-1 (or using IFF).
2. However, GSTR-3B return for the tax period corresponding to the aforesaid statement has not been furnished by the supplier till 30 September following the end of FY in which ITC in respect of such invoice or debit note has been availed.

Reversal: In such situation, the said amount of ITC shall be reversed by the registered person, while furnishing a GSTR-3B return on or before 30 November following the end of such FY.

Payment: If ITC is not reversed as above, the registered person should pay such amount along with interest u/s 50.

Re-avail: If the supplier subsequently furnishes GSTR-3B return for the said tax period, the registered person can re-avail the amount of such credit in GSTR-3B return for a tax period thereafter.

ILLUS 74.9 to 74.11: Krishna supplied goods of value Rs. 1,00,000 (GST @ 18%) to Balram on 15.1.2023. Both Krishna and Balram are registered under GST. Krishna furnished details of invoice for such supply in his GSTR-1 furnished on 11.2.2023. Basis the details, Balram availed ITC of Rs. 18,000 on self-assessment basis in his GSTR-3B return furnished on 20.2.2023. Determine the GST implications if Krishna furnished his GSTR-3B return for the month of January 2023, while discharging the tax liability at the time of furnishing the return, on (A) 20.2.2023, or (B) 20.4.2023, or (C) 10.12.2023.

A: Balram availed ITC in his GSTR-3B return for the tax period January 2023 in respect of the invoice the details of which were furnished by Krishna in his GSTR-1. Further, Krishna furnished his GSTR-3B return for the month of January 2023 by its due date of 20.2.2023. Hence, Rule 37A will not be triggered in this case and ITC need not be reversed.

B: Since Krishna furnished his GSTR-3B return for the month of January 2023 not after 30.9.2023, answer will remain the same as that in 'A'. Rule 37A will not be triggered in this case and ITC need not be reversed.

C: Since Krishna furnished his GSTR-3B return for the month of January 2023 after 30.9.2023, the amount of ITC of Rs. 18,000 will need to be reversed by Balram while furnishing his GSTR-3B return on or before 30.11.2023. If ITC is not so reversed, Balram will need to pay Rs. 18,000 along with interest computed u/s 50. Further, since Krishna furnished his GSTR-3B return subsequently on 10.12.2023, Balram can re-avail the ITC of Rs. 18,000 for a tax period thereafter.

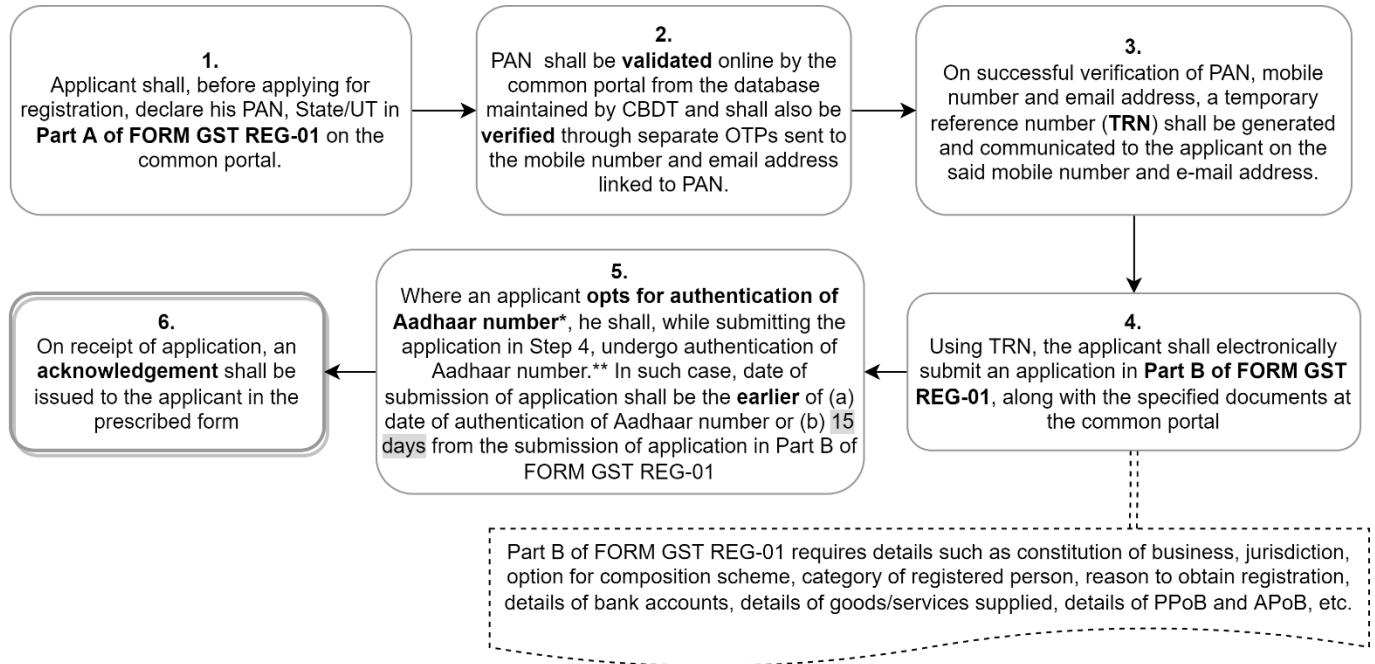
¹ This is in consonance with the matching concept of GST where the ITC claimed by the recipient should align with the tax paid by supplier in relation to the supply. This ensures prevention of revenue loss to the Government by way of grant of ITC even when tax on supply is not paid.

REGISTRATION

Procedure for registration (Paras 92.2 and 92.3 - Content amended)

92.2 STEP 1 - Application for registration [S. 25, Rule 8]

Application for registration is to be made in **FORM GST REG-01**. This Form is in 2 Parts, viz., Part A and Part B. The applicant can either comply with the procedure directly or through a Facilitation Centre notified by the Commissioner. The procedure is given below.



**See para 92.2-1 below*

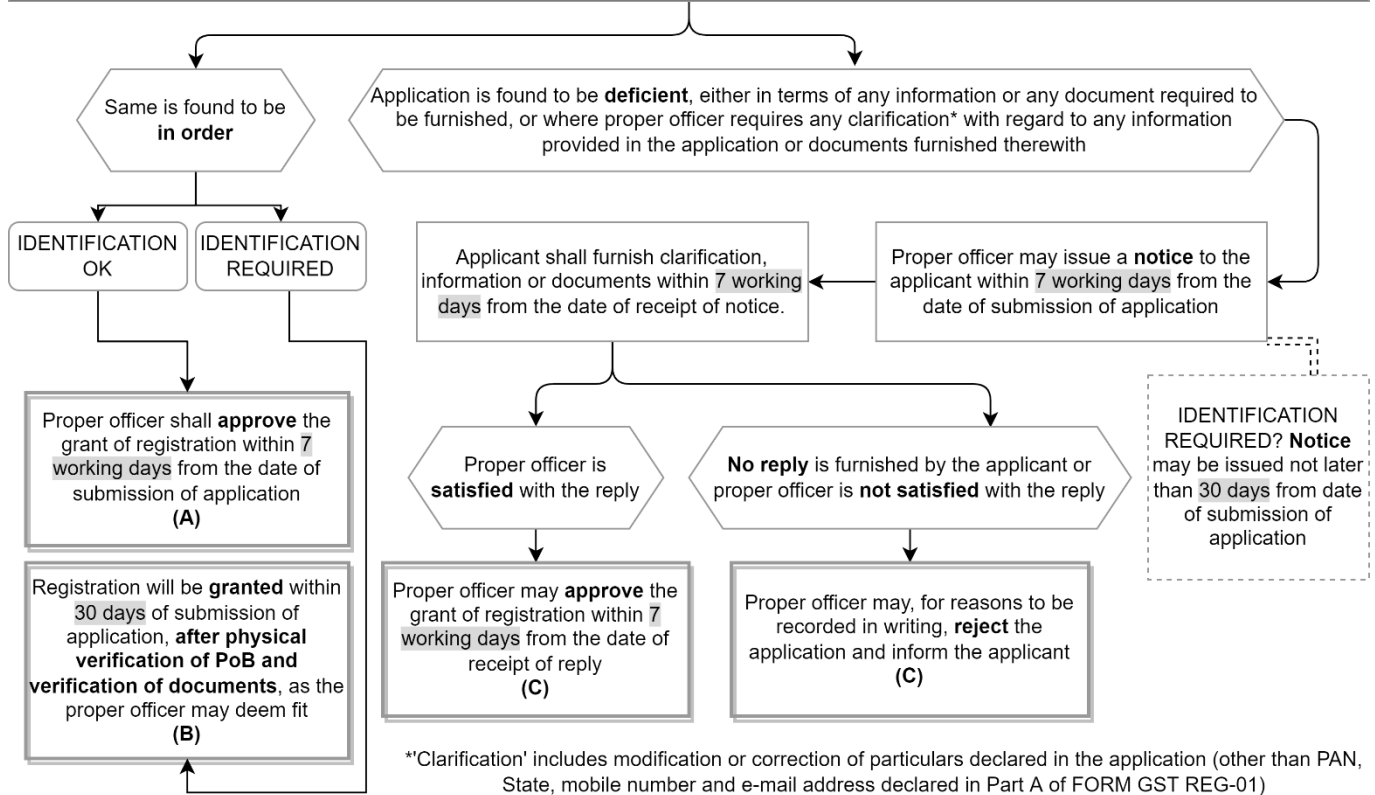
***The provisions also provide for biometric-based Aadhaar authentication (and taking photograph) along with verification of original documents in cases identified based on data analysis and risk parameters. In such case, the application is deemed to be complete only after completion of such process. For the time being, this provision is applicable only in the **State of Gujarat**.²*

92.3 STEP 2 – Verification of application and approval [S. 25, R. 9, 25]

Once the application is successfully submitted in Step 1 above, further procedure is prescribed under Rule 9 and it culminates in either grant or rejection of approval for registration. This is depicted below.

² To improve registration process for high-risk applicants so as to tackle the menace of fake and fraudulent registrations.

The application shall be forwarded to the proper officer who shall **examine** the application and the accompanying documents



'IDENTIFICATION REQUIRED' CASES: Where (a) a person (other than that exempted (see para 92.2-1)) fails to undergo Aadhaar authentication or does not opt for such authentication [para 92.2-1], or (b) a person who has undergone Aadhaar authentication is identified (based on data analysis and risk parameters) for carrying out physical verification of PoBs; or (c) proper officer deems it fit to carry out physical verification of PoBs.

INVOICE

Invoice-cum-bill of supply (Paras 104 - Content amended)

104. INVOICE-CUM-BILL OF SUPPLY [R. 46A]

Where a **registered** person is supplying **taxable as well as exempted** goods and/or services to an **unregistered** person, a single "invoice-cum-bill of supply" may be issued for all such supplies.

This is notwithstanding anything contained in rule 46 (tax invoice) or rule 49 (bill of supply) or rule 54 (tax invoice in special cases). Thus, tax invoice and bill of supply need not be issued separately in such a case. **However, the single invoice-cum-bill of supply should contain the particulars specified for such documents (paras 98.3, 103, 107).**

E-invoice (Para 99.2 - Content amended)

99.2 Who are notified persons?

Only notified persons are covered under the e-invoicing mechanism. Notified person is a **registered** person whose aggregate turnover (ATO) in **any** preceding FY (from 2017-18 onwards) is **> Rs. 5 crore**. Such person is **required** to prepare **e-invoice** in respect of supply of goods and/or services to (a) a registered person or (b) for exports.

ATO is defined u/s 2(6). It is computed on an all-India basis for same PAN. We have already discussed this in para 88.3. Following are **exempt** from the requirement to issue e-invoices (even if the ATO exceeds the aforesaid limit):

1. **A Government department;**
2. **A local authority;**
3. A SEZ unit;
4. An insurer or a banking company or a financial institution, including a NBFC;*
5. Goods transport agency (GTA) supplying services in relation to transportation of goods by road in a goods carriage;*
6. Supplier of passenger transportation service;*
7. Supplier of services by way of admission to exhibition of cinematograph films in multiplex screens.*

**Special provisions apply for issuance of tax invoice [see para 107].*

Above said exemption from generation of e-invoices is for the entity **as a whole** and is not restricted by the nature of supply being made by the said entity.

E-way bill (Para 110.15 - Content amended)

110.15 E-way bill not required to be generated

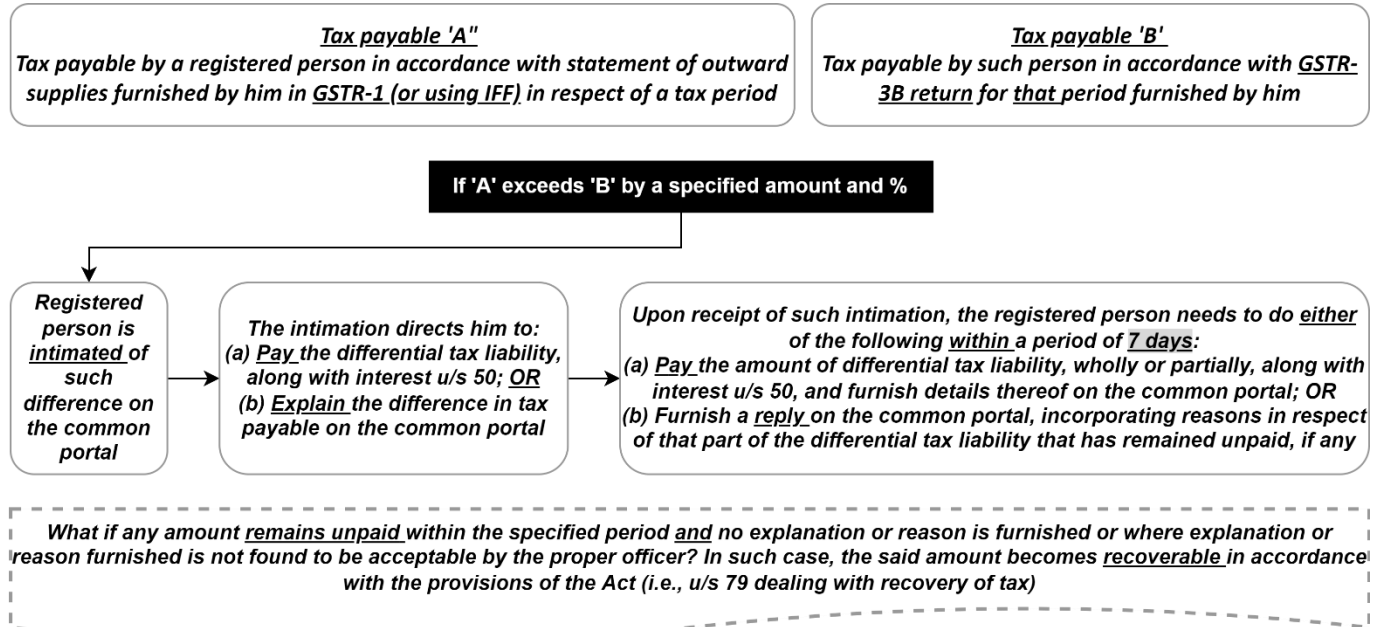
No e-way bill is required to be generated in the following cases:

A: Based on category of goods

1. Where the following goods are being transported:
 - a. Liquefied petroleum gas (LPG) for supply to household and non-domestic exempted category (NDEC) customers
 - b. Kerosene oil sold under PDS
 - c. Postal baggage transported by Department of Posts
 - d. Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal
 - e. Jewellery, goldsmiths' and silversmiths' wares and other articles (**excepting Imitation Jewellery**)
 - f. Currency
 - g. *Used* **personal** and **household** effects
 - h. Coral, unworked and worked coral
2. Where the goods (other than de-oiled cake) being transported, are **exempt** from tax [para 41].
3. Where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel.
4. Where the supply of goods being transported is treated as **no supply** under Schedule III [para 21].
5. Where the goods being transported are exempt from tax under Notification 7/2017-CT(R) and Notification 26/2017-CT(R).
6. Where empty cargo containers are being transported.
7. Where empty cylinders for packing of liquefied petroleum gas (LPG) are being moved for reasons other than supply.

New Rule 88C (Para 122A - Content added)**122A. DEALING WITH DIFFERENCE IN LIABILITY REPORTED IN GSTR-1 AND THAT REPORTED IN GSTR-3B [R. 88C]³**

There could be a situation where the tax payable as per GSTR-1 exceeds the tax payable as per GSTR-3B for a tax period. Few examples of reasons for the differential tax liability could be excess tax paid in earlier tax periods in GSTR-3B, transaction of earlier tax period (for which tax was paid earlier) now declared in GSTR-1, GSTR-1/IFF filed with incorrect details, etc. In such case, the registered person either needs to pay the differential tax liability or explain the difference. If he fails on both counts, the amount become recoverable as per the provisions of the Act. This provision kicks in if the differential exceeds a specified threshold. The procedure is depicted as given below.



Tax payable is relevant, not tax paid.

Tax payable as per GSTR-1 and GSTR-3B for the same tax period is compared.

This provision applies to GSTR-3B return (monthly or quarterly). It does not apply to other Forms of return.

A person to whom such intimation is issued cannot furnish details in GSTR-1 (or using IFF) for a subsequent tax period unless he either pays the differential or furnishes explanation for the amount remaining unpaid [para 117.5].

Bar on furnishing GSTR-1 (Para 117.5 - Content amended)**117.5 Bar on furnishing GSTR-1**

A registered person is not allowed to furnish details of outward supplies in GSTR-1 (or using IFF) in the following cases:

1. ***If the details of outward supplies for any of the previous tax periods has not been furnished by him. However, the Government may, permit by notification, furnishing of details of outward supplies, even if the person has not furnished the details of outward supplies for one or more previous tax periods.***
2. If he has not furnished **GSTR-3B** for the **preceding** tax period (month/quarter, as the case may be).
3. ***If an intimation has been issued under Rule 88C [para 122A] in respect of a tax period unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid. In such case, details in GSTR-1 (or using IFF) cannot be furnished for a subsequent tax period.***

³ To enable taxpayers to pay/ explain reason for difference in tax liabilities reported in GSTR-1 and GSTR-3B, without intervention of the tax officers.

Late fee for delay in filing annual return (Para 130 - Content amended)

For failure to furnish final return and annual return by the due date:

Failure to furnish	Late fee	Maximum late fee
Return required u/s 45 [i.e., final return]	Rs. 100	Rs. 5,000
Return required u/s 44 [i.e., annual return]: Registered person having:		
• ATO of up to Rs. 5 crore in relevant FY	Rs. 25	0.02% of turnover in State or UT
• ATO of > Rs. 5 crore and up to Rs. 20 crore in relevant FY	Rs. 50	0.02% of turnover in State or UT
• ATO of > Rs. 20 crore in relevant FY	Rs. 100	0.25% of turnover in State or UT

*For **every day** during which such failure **continues**.

Late fee referred in the above Tables is with reference to section 47 of the CGST Act. **An equal amount is payable under the respective SGST/UTGST Act as well.**

