

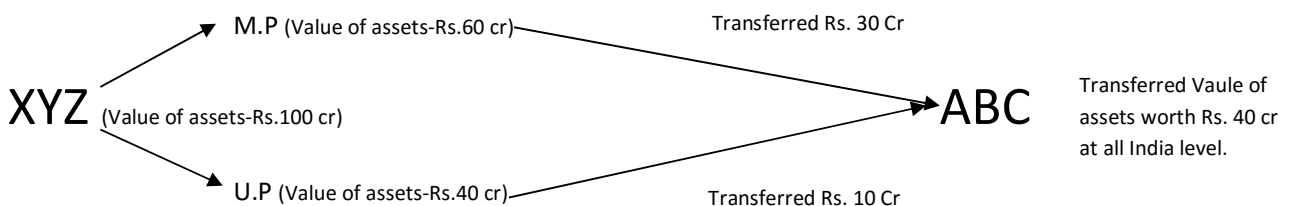
GST Update on Demerger of organisation

On 14th March 2020, council meeting was held wherein few decisions were taken and few were postponed. In this update we shall discuss one of the decisions taken with regard to the procedure in case of sale, merger, de merger of business. Giving effect to the decision taken in the meeting, circular no. 133 03/2020-GST has been issued on 23rd March 2020.

In this circular clarification has been given in case of de merger, about date of apportionment of unutilized balance of credit, ratio of transfer of credit. We shall discuss this clarification in the form of FAQ's for better understanding.

1. In case of demerger, proviso to rule 41 (1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all-India level.

Ans. For the purpose of apportionment of ITC pursuant to a demerger, the value of assets of the new units is to be taken at the State level and not at the all-India level. This is further explained with the help of an example.



A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth Rs. 100 crore, while its assets in State of M.P. and U.P are Rs 60 crore and Rs 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to Rs 30 Crore are transferred to

company ABC in State of M.P, while assets amounting to Rs 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to Rs 40 crore at all-India level are transferred from XYZ to ABC).

The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. $30/60 = 0.5$ and not on the basis of all-India ratio of value of assets, i.e. $40/100=0.4$. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P., i.e. $10/40 = 0.25$.

2. Is the transferor required to file FORM GST ITC – 02 in all States where it is registered?

Ans. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.

3. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to rule 41(1) shall be applicable to calculate the amount of transferable ITC?

Ans. The formula for apportionment of ITC shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.

4. Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess?

Ans. No, the ratio of value of assets, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit.

5. How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORM GST ITC–02 by the transferor?

Ans. The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred. However, the transferor shall be at liberty to determine the amount to be transferred under each tax head within this total amount, subject to the ITC balance available with the transferor under the concerned tax head.

6. In order to calculate the amount of transferable ITC, the apportionment formula has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.

Ans. The apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC – 02 by the transferor.

7. Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?

Ans. The ratio of the value of assets should be taken as on the “appointed date of demerger”.

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