

## FAQ on filing of Transition form

### 1. What is the requirement for filing transition Form GST TRAN - 1?

Every registered person in GST would be required to file form GST TRAN-1 to carry forward credit of eligible duties and taxes paid under earlier laws such as Central excise, service tax and VAT in respect of input or input services or capital goods.

### 2. Who has to file TRAN forms under GST regime?

| Form   | Applicable to  | Not applicable to   |
|--------|--|---|
| TRAN 1 | Registered persons under GST willing to avail or carry forward credits   | Those registering under GST as composition dealer   |
| TRAN 2 | Registered persons under GST willing to take provisional credit  | Manufacturer or service provider  |
| TRAN 3 | Registered persons (traders) under GST willing to take full credit on stocks based on the invoice of vendors vendor being a manufacturer | Manufacturer, service provider and in case of traders if value per piece of such goods less than Rs.25,000/-. |

### 3. When do we have to file TRAN-1 application?

Form TRAN-1 has to be filed within 90 days from the appointed date of 1<sup>st</sup> July 2017. Further, time limit can be extended by another 90 days by the commissioner on recommendation of GST council.

Through notification no. 36/2017 dated 29.09.2017, the due date to file TRAN-1 has been extended to 31<sup>st</sup> Oct 2017.

### 4. Whether TRAN-1 can be revised?

Yes. It can be revised once. Earlier, there was no provision for revision or amendment of details furnished in transition 'Form GST TRAN - 1. However, the provision to revise Form GST TRAN - 1 has not yet been enabled by the system.

### 5. Whether service tax paid under RCM paid after 30th June 2017 is eligible to carry forward as credit?

In terms of Rule 4(7) of Cenvat Credit Rules, credit of tax paid under RCM could have been availed only after payment of service tax in cash / bank. Such payment for June could have happened by 5th / 6th July 2017. Such amount was not eligible to be shown in ST-3

as Cenvat credit for the period 1.04.2017 to 30.06.2017 as payment would have happened after 30<sup>th</sup> June.

However, circular no.207/5/2017 ST has been issued to clarify that such RCM credit arising as a consequence of payment of tax after 30th June 2017 could be indicated in the ST-3 return (if already filed by 31<sup>st</sup> Aug 2017) by revising such return to carry forward to form GST TRAN-1.

However, it is interesting to note that, Section 142(9)(b) of CGST Act provides that where any return is furnished under the existing law, **is revised** after the appointed day but within the time limit specified for such revision under the existing law, if any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall **be refunded to him in cash** under the existing law. The circular issued now allowing to carry forward credit is contrary to this refund provision.

#### **6. What is the due for filing revised return of ST-3?**

The original due date for revising ST-3 return was 45 days from date of filing return for Apr 17 to Jun 17. For the purpose of disclosing the details of RCM credits, all ST3 returns for Apr 17 to Jun 17 filed upto and inclusive of the 31st day of August 2017, would be deemed to have been filed on 31-8-2017. Therefore, the effective date upto which a return can be revised is October 15, 2017. However, if original return itself is not filed then the same can be filed belatedly but the transitional benefits will not be available if the same is filed after the due date for filing of the transition form.

Note: It is not clear if other adjustments / disclosures could be amended by revising the return as circular provides for adjustment of only RCM credits.

#### **7. Can I carry forward entire amount of closing balance lying in VAT/ST-3/ER return? If yes, what are the important conditions.**

Yes. ITC can be carried forward if following conditions are satisfied.

- a. Credit is admissible as input tax credit under GST Act. Assessee may have to verify whether closing balance lying in returns such as ST-3 / VAT Return/ ER-1 needs to ensure that ineligible credits are not carried forward. For Ex. - Cenvat credit was eligible on Outdoor catering service, to the extent of cost is borne by employer. However, in GST regime, it is not eligible irrespective of any fact. Therefore, closing balance of credit on outdoor catering is not eligible. Another example could be works contract service such as repair and maintenance.

- b. All the returns required under the existing law filed for six months immediately preceding the appointed date. This also includes delayed returns. Disclosure in TRAN-1 form would be in sl.no.5 as provided below:

5. Amount of tax credit carried forward in the return filed under existing laws:

(a) Amount of Cenvat credit carried forward to electronic credit ledger as central tax (Section 140(1), Section 140 (4) (a) and Section 140(9))

| Sl. no. | Registration no. under existing law (Central Excise and Service Tax) | Tax period to which the last return filed under the existing law pertains | Date of filing of the return specified in Column no. 3 | Balance cenvat credit carried forward in the said last return | Cenvat Credit admissible as ITC of central tax in accordance with transitional provisions |
|---------|--|---|--|---|---|
| 1       | 2  | 3   | 4  | 5   | 6   |
|         |  |   |  |   |   |
|         | <b>Total</b>   |   |  |   |   |

**8. An SSI unit which was under Rs. 150 Lakh turnover limit in central excise or Service provider below Rs.10 lakh threshold limit had not claimed credit on Capital goods. Can they avail 100% credit in GST as unavailed credit?**

Section 140(2) of CGST Act allows to carry forward unavailed Cenvat credit on capital goods. For the purpose unavailed credit means amount remaining after subtracting amount already availed. It can be interpreted that amount of credit availed is 'zero' in case of SSI units and credit can be claimed to the extent of 100%. An exercise can be done to identify capital goods in stock to avail the credit with disclosure in TRAN-1 form. However, depreciation under income tax should not have been availed.

**Note:** Department could interpret the 'unavailed credit' as balance amount of 50% credit left after availment of 50% credit in financial year 2016-17.

**9. Traders were not entitled to take Cenvat credit in erstwhile law. They will be having duty paid stock as on 1st July, 2017. However, it is possible that the traders may not have duty paid documents in respect of such stock. Is there any scheme under GST, where such traders will be able to get credit of such taxes under GST?**

Yes. According to Section 140 (3) of CGST Act, credit can be claimed for closing stock of goods held as on 30<sup>th</sup> June 2017 on the basis of duty paid invoices available for last 12 months. If duty paid invoices are not available, then a deemed credit scheme is made available to the traders as below:

| Sl. No | Category of Taxpayer                  | Details to be provided  | Amount of ITC available                              |
|--------|---------------------------------------|---|--|
|        | Trader (Duty documents not available) | Form TRAN-1 is to be submitted on or before 31.10.2017. Details of stock of | Amount of duty paid as per invoice details submitted |

|  |                                       |   |  |
|--|---------------------------------------|---|--|
|  |                                       | Inputs (held as inputs/ semi-finished / finished goods) to be used for making taxable supplies where duty paying documents are available for last 12 months.                                    |  |
|  | Trader (Duty documents not available) | Form TRAN-2 is to be submitted at the end of each of the first six months). Details of Stock of Inputs (held as inputs/ semi-finished / finished goods) to be used for making taxable supplies. | In case of intra-State supplies • 60% of the Central Tax paid (in case rate of total tax is 18% or 28%) • 40% of the Central tax paid (in case rate of total tax is 5% or 12%) In case of inter-State supplies, 30% or 20% of integrated tax paid will be allowed. |

Disclosure in TRAN-1 would be as follows:

7. Details of the inputs held in stock in terms of sections 140(3), 140(4)(b), 140(5) and 140(6).

(a) Amount of duties and taxes on inputs claimed as credit excluding the credit claimed under Table 5(a) (under : 140(7))

| Sr. no.   | Details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock |      |      |       |                                     |
|---|--|------|------|-------|-------------------------------------|
|   | HSN as applicable  | Unit | Qty. | Value | Eligible Duties paid on such inputs |
| 1   | 2  | 3    | 4    | 5     | 6                                   |
| <b>7A Where duty paid invoices (including Credit Transfer Document (CTD)) are available</b>   |  |      |      |       |                                     |
| Inputs  |  |      |      |       |                                     |
|   |  |      |      |       |                                     |
| Inputs contained in semi-finished and finished goods  |  |      |      |       |                                     |
|   |  |      |      |       |                                     |
| <b>7B Where duty paid invoices are not available (Applicable only for person other than manufacturer or service provider) – Credit in terms of Rule 117 (4)</b> |  |      |      |       |                                     |
| Inputs  |  |      |      |       |                                     |
|   |  |      |      |       |                                     |

**10. Whether manufacturer or service provider who is already registered under Excise / ST can claim provisional credit on closing stock lying in factory?**

No. The facility of provisional credit of 40% / 60% is not provided for manufacturers / service providers.



**Note:** The provision does not cover a scenario wherein services are received before 30<sup>th</sup> June 2017 but invoices received with service tax after 1<sup>st</sup> July 2017.

**15. Whether filing of TRAN-1 is mandatory if no credit in erstwhile law to carry forward or no other specific details to be submitted?**

No. TRAN-1 to be filed by every registered person who is eligible to take credit of eligible duties and taxes paid under existing laws in respect of input or input services or capital goods in his/her Electronic Credit Ledger and also if there are no any other details that are required to be submitted.

**16. Whether details of closing stock of goods available with job workers to be disclosed in TRAN-1?**

Details of goods sent to job-worker and held in his stock on behalf of principal to be disclosed in table 9 of TRAN-1. Care should be taken to ensure that even the job workers disclose the correct quantity and value of stocks in TRAN-1 filed by such job workers.

9. Details of goods sent to job-worker and held in his stock on behalf of principal under section 141

a. Details of goods sent as principal to the job worker under section 141

| Sr. No.                           | Challan No. | Challan date | Type of goods (inputs/ semi-finished/ finished) | Details of goods with job- worker |             |      |          |       |
|-----------------------------------|-------------|--------------|---|-----------------------------------|-------------|------|----------|-------|
|                                   |             |              |   | HSN                               | Description | Unit | Quantity | Value |
| 1                                 | 2           | 3            | 4   | 5                                 | 6           | 7    | 8        | 9     |
| GSTIN of Job Worker, if available |             |              |   |                                   |             |      |          |       |
| <b>Total</b>                      |             |              |   |                                   |             |      |          |       |

b. Details of goods held in stock as job worker on behalf of the principal under section 141

| Sr. No.               | Challan No. | Challan Date | Type of goods (inputs/ semi-finished/ finished) | Details of goods with job- worker |             |      |          |       |
|-----------------------|-------------|--------------|---|-----------------------------------|-------------|------|----------|-------|
|                       |             |              |   | HSN                               | Description | Unit | Quantity | Value |
| 1                     | 2           | 3            | 4   | 5                                 | 6           | 7    | 8        | 9     |
| GSTIN of Manufacturer |             |              |   |                                   |             |      |          |       |

**17. How to distribute the accumulated credits in case of assessee having centralised registration in Service Tax? Can credits be distributed to all branches? If yes, in what proportion?**

Accumulated credits can be distributed to other branches. There is mechanism provided for distribution of such credits. Therefore, credits could be distributed in any proportion to all or any branches. Details of such credit distribution to be disclosed in table no. 8 of TRAN-1 as below.

**8. Details of transfer of cenvat credit for registered person having centralized registration under existing law (Section 140(8))**

| Sl. No. | Registration no. under existing law (Centralized) | Tax period to which the last return filed under the existing law pertains | Date of filing of the return specified in Column no. 3 | Balance eligible cenvat credit carried forward in the said last return | GSTIN of receivers (same PAN) of ITC of CENTRAL TAX | Distribution document /invoice |      | ITC of CENTRAL TAX transferred |
|---------|---|---|--|--|---|--------------------------------|------|--------------------------------|
|         |   |   |  |  |   | No.                            | Date |                                |
| 1       | 2   | 3   | 4  | 5  | 6   | 7                              | 8    | 9                              |
|         |   |   |  |  |   |                                |      |                                |
|         | <b>Total</b>                                      |   |  |  |   |                                |      |                                |

**18. What would materialize if GST TRAN - 1 is submitted but not filed with DSC/EVC?**

ITC claimed in TRAN - 1 gets credited to the taxpayer's electronic credit ledger on successful submission of the TRAN-1 form. However, filing of the form with prescribed electronic signature is necessary for subsequent utilisation of the credit. GSTR-3B cannot be filed if the same credit is utilized for payment of liabilities declared therein unless until the TRAN - 1 is filed. After submit, the taxpayer cannot change any entries of the TRAN - 1, hence the declaration need to be thoroughly checked before submitting TRAN - 1.

**19. Who and why do we need to file form GST TRAN-3?**

**Who:** Dealer who have received Credit Transfer Document (CTD) issued by Manufacturer and a Manufacturer who has issued CTD to dealers.

**Why:** Every registered person who was registered under Central Excise Act' 1944 and has issued Credit Transfer Document (CTD) and every registered person who is making use of 'Credit Transfer Document' to avail transitional credit is required to file 'Form GST TRAN - 3' within due date.

**20. Whether ITC claimed in TRAN-1 will be audited by departmental officials?**

A recent letter issued by Central Board of Excise and Custom (CBEC) to tax officials dated 11.09.2017 stating that around Rs.65,000 Crore as CGST Credit has been taken as credit by registered persons. Letter also states that there could be a possibility of claiming ineligible credit either due to mistake or confusion. In light of this, tax officials have been instructed to scrutinise registered persons who have claimed more than Rs.1 Crore as transitional credit.

**21. Whether balance available in PLA/ Account current can be transferred to electronic cash ledger in GST?**

No, Presently there is no such enabling provision given in the transitional provisions of GST law allowing transfer of balance in PLA to the electronic cash ledger. Further, in many states security deposit is paid at the time of registration which is also not enabled for transfer through transition forms. Therefore, in this case a person has to apply for refund of the such cash balance/ deposit under the existing VAT law.

## 22. Whether KKC credit can be carry forwarded in to GST regime?

There have been doubts as to eligibility of KKC credit for carry forward under GST. Different interpretations have been placed and the government Twitter Account has also commented that the same may not be eligible for carry forward. We analyse the admissibility of the same as below:

- a) **Section 140 (1):** It permits the carry forward of Credit to GST regime. As per section – “a person shall be entitled to take, in his electronics credit ledger, the amount of **CENVAT Credit** carried forward in the last return filed under pre-GST regime subject to certain conditions. The term “CENVAT Credit” has been defined in the *explanation* to section 142 giving the meaning assigned to it under Central Excise Act or rules issued thereunder.
- b) Rule 3 (1a) of Cenvat Credit Rules, covers KKC within ambit of definition of CENVAT Credit which provides that “**a provider of output service shall be allowed to take CENVAT credit of the Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016**”. Further, there is condition that the credit of KKC can be utilised only against the liability of KKC arising on provision of output service.
- c) Above definition of CENVAT Credit indicates that the KKC is included within ambit of definition of CENVAT Credit as far as service providers are concerned. Needless to say, that the KKC is/was not available to manufacturer as they did not have any liability to pay KKC.
- d) As regards to carry forward of credit, Rule 117 of the CGST Rules provide for mechanism for carry forward of credit. Sub Rule 10f of the said Rule read as under:

*Every registered person entitled to take credit of input tax under **section 140** shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of **eligible duties and taxes as defined in explanation to section 140** to which he is entitled under the provisions of the said section:*

- e) The opening part of the Rule provides that it is applicable for carry forward of credits provided under **entire** section 140. (There are many sub sections within



section 140 which allows for carry forward of credit one of which is sub section 1 as discussed above). However, later on, the scope has been confined to carry forward of only **eligible duties and taxes** as defined in the *explanation* to section 140.

- f) Eligible duty has been defined in the explanation to section 140 only with reference to one of the sub section i.e. 140 (5) (dealing with goods or service received by registered person in the month of July where tax has been paid by the supplier under pre-GST Law). The definition of eligible taxes does not include the KKC. It is confined only to service tax charged under section 66B of the Finance Act, 1994.
- g) The usage of word “eligible duties and taxes” in the later part of the Rule has confined the scope of carry forward of credit by excluding the KKC within its ambit.
- h) However, one has to note very important aspect that what has been provided in the Act cannot be taken away by the Rules. In other words, Rule cannot override the Statutory Provisions of the Law. In case of any discrepancy between two, the section shall prevail over rules.
- i) When the section 140 (1) clearly provides that the CENVAT Credit (as defined in the Cenvat Credit Rules) as per last return filed before GST can be carried forward under GST Law, the Rule cannot curtail the rights by confining it to merely service tax portion and excluding the carry forward of KKC.
- j) Based on above, we are of the considered view that the credit of KKC taken in last return filed for the period upto 30<sup>th</sup> June should be allowed to be carried forward in the GST regime.
- k) **It is equally important to note that the credit cannot be carried for KKC in respect of services which have been received after appointed date in respect of which tax was paid by the supplier pre GST Law as such cases are covered by section 140 (5) of the CGST Act. Hence, KKC credit on services in transit as on 30<sup>th</sup> June, 2017 cannot be allowed to be carried forward.**
- l) At the same point of time, the revenue is also expected to take a view that:
  - a. The credit of KKC cannot be carried forward in view of the scope confined in the Rule 117.
  - b. Even if allowed to be carried forward, it cannot be utilised as there exist no output liability of KKC after introduction of GST.Based on above views, they may object to carry forward of KKC.
- m) To protect the interest of organisation, there could be following approach to deal with situation:

**Option 1:** If the amount involved is not substantial and the company do not want to dispute with department, ignore the carry forward of credits

**Option 2:** If the amount involved is substantial or company intends to carry forward it but want to avoid the risk of department litigation, it may avail the credit in the electronics credit ledger and reverse it under the **PROTEST** without utilisation. Wait till clarity emerges in the law based on clarification by department or any judgment of law. This step would ensure that the right of the company in case of favourable decision is protected and at the same time, there will not be any adverse consequences as to the interest or penalty. Needless to mention that the credit shall not be available for utilisation during the period reversed under protest. The fact of availment of credit and its reversal under PROTEST should be intimated to department along with basis thereof.

**Option 3:** Avail the credit and utilise against output liability of GST. However, this should be done under the intimation to department. It is relevant to note that this option is likely to invite the litigation by department which has to be appropriately addressed.

### **23. What is the solution for error “processed with error”**

- If the existing earlier registration number mentioned in TRAN-1 is not furnished in Registration details.
- Add using non-core field amendment application
- Precaution in such addition
  - Not to use special characters (-, /) while adding new Service Tax no. / Central excise No / VAT TIN
  - Ensure that here are no duplication e-mail/phone no. used to promoter / partners or Authorised signatory tab
  - Ensure that no mandatory field are vacant
  - Ensure that the Goods / Service Codes are added

**24.** Ensure that STD code is entered correctly in the field indicated for it and not entered in the field for entering the local Telephone number. **Whether transitional Credit can be claimed in respect of stocks beyond 12 months?**

Strictly speaking Credit under Section 140(3) cannot be claimed for invoices dated beyond one year from appointed date. There are genuine situations like builder/developer started the project much before one year, project is under construction and majority of flats are unsold. Many assesses are having stocks beyond the year, raising these issues and petitions pending before the Court questioning the validity of restricting the Credit for one year stocks.

**25. There are some Credits like VAT paid on Naphtha, LSHS is in negative list under VAT for availing the Credits. Huge closing stocks of such raw materials available on 30.06.2017. These raw materials will be used for taxable supply in GST. Whether VAT Credit on Naphtha, LSHS can be availed.**

To avail the Credit under old VAT/Excise regime old Credit rules have to be complied. So under VAT Rules these Credits are specifically restricted so these credits cannot be availed in last VAT Return. To avail the transitional credit under Section 140(3) either assessee should be trader or manufacturer manufacturing the exempted goods or service provider providing the exempted service-in these cases the above credits can be taken. To avail the transitional credit under Section 140(3), one of the important point to be kept in mind that Credit restrictions under VAT or CCR, 2004 will not apply.

In the above scenario if the manufacturer is manufacturing the dutiable goods paying the excise duty and VAT, the Credit on Naphtha LSHS cannot be claimed either in VAT or under Section 140(3). As these goods are used for taxable supply in GST Credit should have been allowed. Like this there are many Credits on goods under VAT or Excise restricted due to symphony of Credit Rules, not able to carry forward and not able to avail in transitional form.

**26. Whether Capital Goods in transit as on 30.06.2017 can be availed as transitional Credit under Section 140(5) of GST Act, 2017-**

Section 140(5) of CGST Act, 2017 is talking about input and input services in transit and not the Capital Goods. Strictly speaking the excise duty involved on Capital Goods which are in-transit as on 30.06.2017 not eligible for Credit. This may be unintentional mistake.

**27. A dealer purchased the Capital goods in the month of June 2017 and availed the VAT Credit. These goods are excise duty paid goods and these goods to be used for taxable supply in GST Regime. Eligible goods in GST regime. Can he take Excise Duty paid as transitional credit in Trans-1.**

Section 140(3) allows the transitional Credit on Input contained in stock, semi finished foods or finished goods held in stock. Section 140(3) will not give transitional credit for capital goods i.e other than stock.

**28. Whether transitional Credit under Section 140(3) shall be availed in respective State or it can be availed in any State or at head office.**

Earlier in Service Tax regime all the Service Tax liability of Service provider across the country can be discharged at one place. Now under GST it is decentralized. Transitional

*Hiregange Team*

credit of Excise duty involved or VAT in respect of stock shall be availed in the State where these goods are used for taxable supply not in another State.