


# FAQ ON RE-OPENING OF TRAN

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Based on the directions of the Hon'ble Supreme Court, in the GST portal, the facility to file / revise TRAN-1 / TRAN-2 returns, is going to be re-opened during the period from 01.10.2022 to 30.11.2022, to claim eligible transitional credits under Section 140 of the GST Acts, which were not claimed earlier. In this connection, the CBIC has also issued a Circular bearing No. 180/12/2022 Dated 09.09.2022 explaining the procedures to be followed in this regard. In this FAQ, an attempt is made to answer various common questions with regard to the issue of claiming transitional credit, using this special opportunity.

01

We have already filed our TRAN-1 / TRAN-2 and the credits claimed by us were also credited to our Electronic Credit Ledger. Should we have to again file TRAN-1 / TRAN-2 now?



No. The facility is only for those cases where certain credits have been missed to be taken or to correct any mistakes while claiming such credits.

02

We have already filed our TRAN-1 / TRAN-2 but due to some technical issues, the amount was not at all credited into our Electronic Credit Ledger. We have filed Writ Petition in this regard and the High Court has also directed the department to consider our claim but till now nothing has happened. Should we have to again file TRAN-1 / TRAN-2 now?



Yes. You can make use of this facility.

03

While filing our TRAN-1, we have made some clerical mistakes as a result of which only lesser amount was credited to our Electronic Credit Ledger, than what is entitled. We have filed Writ Petition before the jurisdictional High Court and the same is pending. Can we claim it now?



Yes. The current facility is for such cases. You may inform the High Court about the facility now being provided by the Government and get the Writ Petition disposed off accordingly.



04

We have not claimed transitioning of the balance of Education Cess and Secondary Education Cess, lying as closing balance in our Electronic Credit Ledger as on 30.06.2017. Can we claim it now?



The issue as to whether the credit of Education Cess and Secondary Education Cess is entitled to be carried forwarded or not is debatable and being litigated. So, even if you claim the same now, the department would deny the same.

If you wish to contest the issue further, by way of challenging such rejection by way of appeal or Writ Petition, you can claim them now. It may be noted that there are contrary judgements from various High Courts with regard to the eligibility to claim transitioning of Education Cess and Secondary Education Cess

05

Whether the amount claimed now would automatically be credited to the Electronic credit Ledger?



No. The claim will be verified by the jurisdictional officers and a speaking order would be passed after granting a hearing. If the credit is held to be admissible, then the officers will credit the same to the Electronic credit Ledger.

06

If the jurisdictional officer rejects our claim for various reasons, what is the remedy?



The order passed in this regard can be appealed against under Section 107 of the Act or in proper cases, you can also challenge the order by way of Writ Petition before the jurisdictional High Court.

07

We have received some capital goods after 01.07.2017 on which Central Excise duty was paid. We have been advised not to claim the credit as capital goods are not covered under Section 140 (5). Can we claim it now?



The plain language of Section 140 (5) does not extend the benefit for capital goods. Only those credits, which are entitled as per Section 140, but wrongly claimed or missed to be claimed alone can be claimed now. As the issue of credit on capital goods in transit is not specifically covered under Section 140, you cannot claim it.

In the alternative, you can claim the same and if the same is rejected by the department, you can contest the issue by filing appeal / Writ Petition against such rejection questioning the non-inclusion of capital goods under Section 140 (5).

08

**We have missed to claim certain eligible transitional credit while filing our TRAN 1. Subsequently, we have taken the credit in our GSTR 3 B return. Can we use the present facility to regularise the credit?**



If the credit already availed by you through GSTR – 3 B has been disputed by the department by issue of show cause notice, you cannot claim the same now and you have to pursue the litigation. If no show cause notice has been issued, you can revise your TRAN-1 now and also inform the department that you have already availed the credit through GSTR 3B return. Such declaration has to be made in Part B of the declaration format prescribed through Circular No. 180. If the credit is otherwise entitled, it is expected that the department would regularise the same. The declaration in Part B, also provides for reversal of such credit now and claim it through this facility.

09

**Continuing with the previous question, whether we will be asked to pay any interest for availing the credit through GSTR-3B?**



If the credit is otherwise entitled, claiming it through GSTR-3B cannot be faulted. Once the facility to claim the credit is once again allowed as per the directions of the Hon'ble Supreme Court, your entitlement to claim such credit shall date back to 1st July 2017 and no interest can be demanded for the same.

10

We have paid certain Service Tax under reverse charge mechanism after the due date for filing TRAN-was over. Can we claim credit of such Service Tax by using this opportunity.



If may be noted that Section 140 does not contain any express provision to allow such credit. It has been held by the Hon'ble High Court of Madras in Ganges International, W.P No. 528 of 2019 that such credits are admissible under Section 142 (3). Since the situation is not directly covered under Section 140, such claims are likely to be rejected by the department. But, you may claim the same and if the same is rejected, the same may be contested by way of appeal.

11

We are entitled to claim credit of excise duties paid on the inputs lying in stock with them as on 30.06.2017 as per Section 140 (3) of the Act. We have also declared the details of such stock in our TRAN-1. But, since we are not having duty paying documents, we should have filed TRAN-2 for the first six months after introduction of GST, giving details of the sales made from such stock and based on the tax paid on such supplies, we would have been entitled to transitional credit, as provided for. But, we have not filed such TRAN-2 returns due to ignorance. Can we use the present facility to claim such credit?



Yes. You can now file TRAN-2, showing the details of the supplies made during the period from July 2017 to December 2017, by indicating the last month in which such sales was made.

12

We are entitled to claim credit of excise duties paid on the inputs lying in stock with them as on 30.06.2017 as per Section 140 (3) of the Act. But such credit is restricted only in respect of those inputs, where the duty paying documents are dated upto one year preceding 01.07.2017 only. We also have stock of inputs purchased prior to July 2016. Can we claim credit in respect of such stock now?



As per the plain language of Section 140 (3), such credit is entitled only for the purchases made upto one year before. So even if you claim such credit now, the same would be rejected by the department. If you wish to contest the prescription of such time period for availing transitional credit in respect of the stock on hand, you can claim the same and once the same is rejected, you can challenge the same by way of filing a Writ Petition, challenging the prescription of such time limit. It may be noted that already there are contrary judgements from two High Courts on the issue.

13

While carrying forward the balance of VAT credit as on 30.06.2017 we have reduced our entitlement to the extent of pending Forms (Form C, etc.). Subsequently we have received such forms. Can we now revise our TRAN-1 to claim credit for the forms received subsequently?



No. The respective State SGST Acts provided for claim of refund in such cases, which could have been claimed by you. Further Tables 5 (b) and (c) of TRAN-1 is not going to be re-opened now to claim such credits.



14

We had a closing balance of cenvat credit in our Input Service Distributor (ISD) registration. We have filed TRAN-1 in our ISD registration and the amount was also credited to the Electronic Credit Ledger of the ISD. But we were not able to distribute such credit, after introduction of GST, as only the regular GST credits could be distributed by ISDs, by filing GSTR-6. What can be done now?



Even though ISDs were allowed to file TRAN-1 and the amount was also credited to the Electronic Credit Ledgers of ISDs, subsequently, no Electronic Credit Ledger is available for ISDs. As per Section 140 (7), such closing balance of credit with ISD could have been claimed by the respective units, by claiming such credit in the TRAN-1 filed by such units, as per the formula for distribution under Cenvat Credit Rules, 2004. Now, the different units of the entity having closing balance of credit with ISD, can file / revise their TRAN-1 and claim proportionate credit entitled for them.

15

We have filed our TRAN-1 and claimed various transitional credit. The department has objected to certain credits availed by us and issued show cause notice. In order to avoid interest liability we have reversed such credit and contesting the issue, which is currently pending in appeal. Can we claim the credit now?



As your entitlement to such credit is currently a subject matter of dispute, you have to pursue the litigation and you cannot reclaim the credit now.

# THANK YOU



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