

MONTHLY NEWSLETTER

GST TRACKER

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NEW SUNRISE 2022

NEW
HOPES



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EDITOR'S NOTE



New Year with New Hopes

The new year has ushered in new rays of hope in all of us. The rays of motivation, positivity are there which are encouraging us to take little steps towards a new tomorrow. We genuinely believe that we can change the world for the better with our little-little initiatives.

We will be working hard in taking such little steps towards bringing awareness about GST knowledge among our readers and hope you all will join us in this journey.

Pankaj Kataria

(Founder Pakkabil)

REFUND UNDER GST

Fellow Chartered Accountant and Law graduate. Sr. Partner of Ravi Kumar & Co. Chartered Accountants with offices at Noida, Ghaziabad and Gurugram. Practicing since 1972 in tax matters with specialization in Indirect taxes. Nominated as Member of U.P. State Tax Board, Govt. of U.P. Ex-member of U.P. Advisory Committee on VAT of U.P. Govt. Past Chairman of Ghaziabad Branch of ICAI. Nominated Member of GST committee of PHD Chamber of Commerce & Industry. Speaker on GST, Vat & Works Contract. Contributed articles on tax matters in various law journals.



CA RAVI KUMAR

Masters in Law, PGDM & Diploma in Intl. Trade Laws incl. ADR's from Indian Law Institute. Associated with Ravi Kumar & Co. CA's. Providing consultancy for legal transactions and litigation in GST, Works Contract etc. Member of All India Federation of Tax Practitioners and Delhi High Court Bar Assn.



ADV AMIT KUMAR

Introduction:

The introduction of Goods & Service Tax (GST) in India is one of the biggest indirect tax reforms since Independence. Implementation of GST has bestowed the country by creation of national market by bringing down fiscal barriers amongst the States and has mitigated the cascading effect of taxes by allowing seamless credit of Input tax across goods and services.

Increasing exports ranks among the highest priorities of any government wishing to stimulate economic growth. GST has changed the taxation policy for import and export transactions and introduced separate incentives by way of refund of tax components resulting in nullifying the impact of indirect taxes on the cost of supply. Timely disbursement of correct amount of refund can help the Companies in having adequate working capital which signifies its operating liquidity. Timely refund is the heart and soul of GST legislation. This article deals in depth, legal and procedural facets of Refund under GST regime.

Refund under GST Act could arise broadly for following reasons:

Export of Goods & Services; Supplies to SEZ's and Developers; Deemed Exports; Refund of Taxes on purchase made by UN or Embassies; Impact of judgment of court; Accumulated ITC on account of Inverted duty structure; On finalization of provisional assessment; Refund of pre-deposit; Excess payment due to mistake; Refunds to international tourists of GST paid on goods in India; Issuance of refund vouchers for taxes paid in advance; Refund of CGST & SGST paid treating the supply as intra-state which is held inter-state later etc.

Brief summary of relevant Sections 54 to 58 of CGST Act covering administration of Refund:

Section 54 contains 14 sub-sections. It provides for application for refund of balance in cash ledger to be filed before the expiry of two years from the relevant date. UNO and Embassies etc. are also entitled to refund of tax paid on inward supplies of goods or services. Refund of un-utilised input tax credit is not to be allowed in few cases. Application for seeking refund is to be accompanied with documentary evidence to establish that refund is due and the incidence of tax has not been passed on to any other person. No documentary evidence required, if refund amount of refund is less than Rupees two lacs. Provisional refund of 90% can be given in case of zero-rated supplies. Where a person has defaulted in furnishing any return or tax has not been paid then no refund till compliance done. Interest for delayed refund beyond sixty days of filing of application @ 6% and in cases of court orders @ 9% (Sec.56). No refund of advance tax deposited by Casual taxable person and Non-resident taxable person to be paid unless all returns have been furnished as per Section 39.

Sub-Section 11 of Section 54 in our opinion is not in consonance with principle of equity and grants arbitrary discretion to authorities. It reads; "If Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue on account of malfeasance or fraud committed, he may, withhold the refund".

Section 54 further prescribes “Relevant dates”

For goods exported out of India by sea / air: date on which the ship or the aircraft leaves India. For goods exported by land: date on which such goods pass the frontier. For goods exported by post: date of despatch of goods. In case of Deemed Exports: It is date on which return relating to deemed exports is furnished. For Services exported out of India; where a refund of tax paid is available: date of receipt of payment in foreign exchange or in INR as per RBI where supply of services has completed prior to the receipt of such payment or Issue of Invoice: where payment for the services had been received in advance prior to the date of issue of the invoice. For tax refund, due to passing of judgment: it is date of communication of such judgment. In case of a person, other than the supplier: date of receipt of goods or services or both by such person. In any other case: date of payment of tax

As per Section 57, Government shall constitute Consumer Welfare Fund. As per Section 58, all sums credited to the fund shall be utilised for the welfare of the consumers. Government shall maintain proper records and annual statement of accounts.

Brief summary of Rule 89 to 97 under CGST Rules 2017 covering Refund:

Rule 89 prescribes procedure for seeking refund. CBIC clarified the online procedure in detail vide its circular number 125/44/2019 dated 18th November 2019. It directs that application for refund is to be filed electronically in RFD-01. Application for refund to be accompanied by relevant documentary evidence. In case where the amount of refund claimed exceeds Rs.2,50,000/- a certificate issued by CA / ICWA certifying that incidence of tax claimed as refund has not been passed on to any other person shall also accompany.

Rule 90 provides for receipt of refund application in form RFD-02. If any Deficiency is found in the refund application, RFD-03 will be issued. Rule 91 states that person claiming refund, if during period of 5 years has not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds Rs.2,50,000/- then provisional refund can be sanctioned in RFD-04. The powers are discretionary and too wild and shall hinder proper disbursement of eligible refund.

Rule 92 provides for order sanctioning refund (RFD-06). RFD-07 (Part-A) is for adjustment order of demand against refund. RFD (Part-B) is for refund liable to be withheld. RFD-08 is notice in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable. RFD-09 is for reply within a period of 15 days of the receipt of such notice. Rule 93 deals with credit of the amount of rejected refund claim. Rule 94 deals with order sanctioning interest on delayed refunds.

Rule 95 further deals with refund of tax to certain persons. RFD-10 is prescribed form for person eligible to claim refund of tax paid by him on his inward supplies can apply for refund once in every quarter. Rule 95A prescribes for refund of taxes to the retail outlets established in departure area of an international airport beyond immigration counters making tax free supply to an outgoing international tourist by furnishing RFD-10B. As per Rule 96, the shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India. Rule 96A prescribes for export of goods or services under bond or letter of undertaking in RFD-11. Rule 97 deals with Consumer welfare fund.

Gist of main Notifications issued under GST on Refund:

- No. 5/2017 dt. 28.06.17: Goods in respect of which Un-utilized ITC will not be admissible as refund w.r.t HSN codes 5007, 5111 to 5113, 5208 to 5212, 5309 to 5311, 5407, 5408, 5512 to 5516, 60, 8601 to 8608
- No.39/2017 dt. 13.10.17: Cross-empower State tax officers for processing and grant of refund
- No.49/2017 dt. 18.10.17: Evidences required to be produced by the supplier of Deemed export supplies for claiming refund under Rule 89(2)(g)
- No.10/2018 dt. 23.01.18: Amending notification No. 39/2017 dt. 13.10.2017 for cross-empowerment of State tax officers for processing and grant of refund
- No.20/2018 dt. 28.03.18: Extension of due date for filing of application for refund u/s 55 by notified agencies
- No.54/2018 dt. 09.10.18: Seeks to make amendments (Twelfth Amendment, 2018) to the CGST Rules, 2017. This notification amends rule 96(10) to allow exporters who have received capital goods under EPCG scheme to claim refund of the IGST paid on exports and align rule 89(4B) with rule 96(10)
- An important Notification number 15 / 2021 dt. 18.05.21 brought changes in Rules 90, 92 and 96 to streamline refund procedure. It provides that time period from the date of filing of the refund claim in RFD-01 till the date of communication of the deficiencies is to be excluded from the period of 2 years. It allowed registered person to withdraw the application before issuance of provisional refund sanction order or payment order or refund withhold order. On submission of application in RFD-01, any amount debited from electronic credit ledger or electronic cash ledger, shall be credited back to the ledger from which such debit was made.
- Vide Notification number 35 / 2021 dated 24.09.2021, CBIC has clarified that the term "subsequently held" in Section 77 of CGST Act, 2017 or u/s 19 of the IGST Act, 2017 covers both the cases where the Inter-State or Intra-State supply made by a taxpayer, is either subsequently found as Intra-State or Inter-State respectively. The refund can be claimed before the expiry of two years from the date of payment of tax under the correct head.

Gist of important Circulars issued under GST on Refund:

- No. 17/17/2017 dt. 15.11.17: Manual filing and processing of refund claims in respect of zero-rated supplies
- No.18/18/2017 dt. 16.11.17:Refund of unutilized input tax credit of GST paid on inputs in respect of exporters of fabrics
- No.24/24/2017 dt.21.12.17:Manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger
- No.36/10/2018 dt. 13.03.18:Processing of refund application for UN entities
- No.37/11/2018 dt.15.03.18:Clarifications on exports related refund issues
- No.43/17/2018 dt.13.04.18:Clarifying the issues arising in refund to UN
- No.45/19/2018 dt.30.05.18,No.59/33/2018 dt.04.09.18, No.70/44/2018 dt.26.10.18, No.79/53/2018 dt.31.12.18, No.94/13/2019 dt.28.03.19:No.135/05/2020 dt.31.03.20, No. 139/09/2020 dt.10.06.20, No. 147/03//2021 dt.12.03.21:Clarify certain refund related issues
- No.60/34/2018 dt.04.09.18:Processing of refund applications filed by CSD
- No. 63/37/2018 dt. 14.09.18:Clarification on processing of UN entities refund
- No.104/23/2019 dt.28.06.19:Refund applications wrongly mapped
- No.106/25/2019 dt.29.06.19:Refund of taxes paid on inward supply of indigenous goods by retail outlets in departure area of the international airport
- No.110/29/2019 dt.03.10.19:Eligibility to file refund for a period and category
- No.111/30/2019 dt.03.10.19:Clarify procedure to claim refund in RFD-01 subsequent to favourable order in appeal or any other forum
- No.125/44/2019 dt.18.11.19:Seeks to clarify the fully electronic refund process through RFD-01 & single disbursement
- No.131/01/2020 dt.23.01.20:SOP for IGST refunds for exporters
- No. 162/18/2021 dt.25.09.21:Refund of tax u/s.77(1) CGST &u/s 19(1) IGST

Circular number 125/44/2019-GST dated 18.11.2019 is important whereby fully electronic refund process for refund applications filed w.e.f 26.9.2019 was initiated. This circular clarified in detail, the procedures / issues pertaining to refund. Vide Circular no. 139/09/2020 dt. 10.06.2020, CBIC clarified that circular number 135/05/2020 dt. 31.03.2020 in no way impacted the refund of Input Tax Credit availed on Invoices of ISD, imports or Inward supplies liable to RCM etc. Circular number 160/16/2021-GST dt. 20.09.2021 deals with Section 54(3) and states that goods which are subjected to Export Duty (export duty is paid at the time of export) will be covered under restrictions imposed u/s 54(3) from availing of refund of accumulated Input tax credit. Vide circular no. 2122021 / letter number GST/2021-22/14/Commercial Tax dt. 25.08.2021 of Commercial Tax, UP, it has been directed that attachment of taxable person can be undertaken in cases fraudulent refund is obtained.

Circular no.: 22 / 2021–TNGST dated 26.09.2021 issued by Government of Tamil Nadu: This is a landmark circular with objective of minimal physical interaction and directs faceless process of refund disbursement by way of flow chart. It simplifies refund procedure and makes it user-friendly. Other State Governments can imbibe the spirit of the Tamil Nadu Government circular to ensure fast track disbursement of refund.

Some important judgments under GST on Refund:

- Union of India Vs. VKC Footsteps India Pvt Ltd. (Civil Appeal no. 4810 of 2021) Supreme Court of India: The issue as regards inclusion of input services for the purpose of claiming refund of accumulated input tax credit on account of inverted duty structure was covered by contrary decisions of Madras High Court and Gujarat High Court. While the Gujarat High Court declared rule 89(5) of the CGST Rules, 2017 restricting refund of input services under inverted duty structure as ultra vires the Section 54(3) of the CGST Act, 2017 but Madras High Court upheld the validity of Rule 89(5). Supreme Court concurred with the view of Madras High Court and confirmed the validity of Rule 89(5).

- BMG Informatics Private Limited Vs. The Union of India & Ors. (WP(C)/3878/2021) High Court of Assam, Nagaland, Mizoram & Arunachal Pradesh: Issue involved was; whether trader availing partial exemption on the output supplies is eligible for claiming refund under inverted duty structure? The Company was engaged in sales and service of IT products to Government departments / PSU / research and educational Institutions situated in the North Eastern region. Vide Noti. no.45/2017 dt. 14.11.17, the tax rate on such sales in the N-E region is liable to 2.5% GST and any tax in excess thereof stands exempted. The Company filed refund claim under inverted duty structure and their refund claim was being disputed in view of clarification issued vide para 3.2 of the circular number 135/05/2020 dt. 31.03.2020 which stated that although input supplies and output supplies may attract different tax rates at different point of time, such differences in tax rates are not covered u/s 54(3)(ii) of the CGST Act. Gauhati High Court inter-alia held that the clarification issued by the circular was against the spirit of provisions contained in Section 54(3)(ii) as it nowhere states that difference in the rates at different points of time for same input and output supplies are not covered under inverted duty structure. The exception being, where the output supplies are nil rated or fully exempted supplies. In present case, the output supplies were not fully exempted but were partially exempted. It was held that the Company is entitled for claiming refund of accumulated input tax credit on account of inverted duty structure
- Atin Krishna Vs. Union of India 2019 25 GSTL 390 Allahabad High Court: Refund of input tax credit (ITC) on sale by duty free shop as sales is zero rated (exports) and covered u/s 16(1) & (2) of IGST Act
- CIAL Duty-Free and Retail Services Ltd. Vs. Union of India 2020 42 GSTL 481 Kerala High Court: Goods brought from foreign countries kept in a bonded warehouse and transferred to duty-free shops as and when required. Goods sold at duty-free shops before being imported into the country as goods did not cross custom frontiers as they were lying in a bonded warehouse and will qualify as zero-rated / exports sales
- Saraf Natural Stone 2019 28 GSTL 385 Gujarat High Court: Interest on delayed refund is allowed
- VSG Exports Pvt. Ltd. 2019 28 GSTL 421 Madras High Court: Wrong HSN code mentioned in refund application is no sound reason to hold the refund
- Jian International 2020 80 GST 828 Delhi High Court: Deficiency Memo not issued within time, hence refund application presumed to be complete in all respects
- Meena Service Centre 2020 43 GSTL 65 (Commissioner (Appeals) Rajasthan): Licence fees is not input. Refund of inverted tax structure on inputs is allowed not on services
- Chaizup Beverages LLP Vs. Asstt. Commr. of GST & Central Excise Coimbatore Division 2021 (50) GSTL 354 (Madras): Dealing with Sec.54(7), it was held that in case of exports, dealer can either claim duty drawback or refund of ITC, whichever is higher

- Britannia Industries Ltd. Vs. Union of India (Civil Appeal No.: 15473 of 2019 decided on 11.03.2020) Gujarat High Court: Allowed refund of unutilized ITC received by SEZ unit through ISD.
- Platinum Holdings Pvt. Ltd. Vs. Additional Commissioner of GST & Central Excise, Chennai (W.P. No.:13284 of 2020 decided on 11.08.2021) Madras High Court: Section 54 and Rule 89 does not restrict refund of ITC on supplies made to SEZ to supplier of services only.

Concept of Unjust Enrichment:

Section 54(8) of CGST Act 2017 clearly states that refund can only be disbursed, if person seeking refund has not passed on the incidence of such tax and interest to any other person, meaning thereby that such person is not being unjustly enriched. Under the GST law, the person seeking refund has to rebut the presumption of unjust enrichment and prove that he has not passed on the burden of excess tax paid of which refund is being claimed. Importance of this concept can be adduced from Rule 89 which states that for refund of tax exceeding Rs.2,50,000/- the person claiming refund has to file a certificate issued by CA / ICWA certifying that incidence of tax claimed as refund has not been passed on to any other person.

Concept of Unjust enrichment was prevalent under previous tax regimes as well. Supreme Court has treated at par insofar as unjust enrichment is concerned; Whether it be a case of the same commodity being sold or a case of captive consumption of a raw material or case of captive consumption of even a captive goods.

In the case of Sahkari Khand Udyog Mandal Ltd. Vs. Comm. of Central Excise 2005 2 SCC 738 whereat Unjust Enrichment; “means retention of a benefit by a person that is unjust or inequitable”. “Unjust enrichment” occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else”. The doctrine of “unjust enrichment” is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of “unjust enrichment” arises where retention of benefit is considered contrary to justice or against equity.

Unjust enrichment has been adapted as a solitary principle of equity i.e. premier through all possible factual scenarios, irrespective of the use to which a commodity is put. Refer judgments of Supreme Court in the cases of Union of India Vs. Solar Pesticides 2000 (116) ELT 401 and Comm. of Central Excise Vs. Grasim Industries 2015 (318) ELT 594.

Our humble view is that refund cannot be held back for the reason that any person after manufacturing sells that commodity in profit. It should not necessarily imply that excess tax wrongly paid by such purchasing manufacturer has been recovered. The profit element could attribute to many other reasons. Nonetheless State cannot earn benefit of such wrongly paid taxes. In the case of Vam Organic Ltd. 1999 UPTC 13 of All. High Court, refund was allowed. In SLP no. 5416-5424 of 2000 before the Supreme Court, vide order dated 18.10.2006, on the basis of judgment in the case of Solar Pesticides (supra), it was held that; “the inevitable conclusion is that whatever has been passed on to the customer by the respondents has to be tested on the touchstone of the principle of unjust enrichment”. “While examining the claim the concerned authority shall keep in view the principles of “Unjust Enrichment” in respect of all amounts which have been passed on to any customer in essence that it has been collected from him”. Quote.

Concept of finality of Decree, Judgment, Order applicable to Refund under GST:

Section 56 of CGST Act 2017 stipulates that if refund not paid within 60 days of filing of application, then interest @ 9%, will be oaidin cases where refund becomes due on account of decree, judgment or acourt order which attained “FINALITY”.For principles of finality, cases of Kunhayammed&Ors. Vs. State of Kerala &Anr. (SC) dt. 19.7.2000 and C.S.T. Vs. Swadeshi Polytex Ltd. of 2005 can be referred. In the case of KarnatakamGovindappaSetty&Sons Vs. State of AP 1980 (46) STC 393 can be a relevant case study where after the appeals filed by the assessee were allowed by the Tribunal, the assessee filed an application before the Commercial tax officer claiming refund of the tax paid. The Commercial tax officer informed the assessee that the refund could not be made as the orders of the Appellate Tribunal has been challenged in revision before the High Court and the application would be considered after the disposal of the revision, but no order of stay was obtained by the officer to that effect.Held, that the pendency of the tax revision cases was not a sufficient ground for withholding the tax.

Conclusion:

It would be pertinent to quote old case of C.T.T. VS. Amrit Vanaspati Company Ltd. 2005 VLJ (Vol.1) 393, Allahabad High Court in context of grant of refund only has held; “It is always to be kept in mind that procedure prescribed under law is towards giving substantial justice to a party. The procedure is not an obstacle for providing justice”. A person applying for refund and the person issuing refund should be fully conversant with the provisions of law and procedural mechanism regarding refund discussed hereinabove. Timely grant of Refund is the very essence of proper administration of the GST Act, formulated on the spirit of “Good and Simple Tax”.

GSTN Updates December 2021

Date of Issue	Subject
02/12/2021	Module wise new functionalities deployed on the GST Portal for taxpayers
22/12/2021	Mandatory Aadhaar authentication for registered person

Source: www.gst.gov.in

Notifications/Circulars/Orders issued in the month of December 2021

Central Tax Notifications December 2021

Notification Nos.	Date of Issue	Subject
37/2021	01/12/2021	Seeks to make amendments (Ninth Amendment, 2021) to the CGST Rules, 2017..
38/2021	21/12/2021	Seeks to bring sub-rule (2) and sub-rule (3), clause (i) of sub-rule (6) and sub-rule (7) of rule 2 of the CGST (Eighth Amendment) Rules, 2021 into force w.e.f. 01.01.2022.
39/2021	21/12/2021	Seeks to notify 01.01.2022 as the date on which provisions of section 108, 109 and 113 to 122 of the Finance Act, 2021 shall come into force.
40/2021	29/12/2021	Seeks to make amendments (Tenth Amendment, 2021) to the CGST Rules, 2017.

Central Tax (Rate) Notification December 2021

Notification Nos.	Date of Issue	Subject
18/2021	28/12/2021	Seeks to amend Notification No 1/2017- Central Tax (Rate) dated 28.06.2017
19/2021	28/12/2021	Seeks to amend Notification No 2/2017- Central Tax (Rate) dated 28.06.2017.
20/2021	28/12/2021	Seeks to amend Notification No 21/2018- Central Tax (Rate) dated 26.07.2018
21/2021	31/12/2021	Seeks to supersede notification 14/2021- CT(R) dated 18.11.2021 and amend Notification No 1/2017- CT (Rate) dated 28.06.2017.
22/2021	31/12/2021	Seeks to supersede notification 15/2021- CT(R) dated 18.11.2021 and amend Notification No 11/2017- CT (Rate) dated 28.06.2017.

Integrated Tax Notification December 2021

No Integrated Tax Notification was issued in the month of December 2021

Integrated Tax (Rate) Notification December 2021

Notification Nos.	Date of Issue	Subject
18/2021	28/12/2021	Seeks to amend Notification No 1/2017- Integrated Tax (Rate) dated 28.06.2017
19/2021	28/12/2021	Seeks to amend Notification No 2/2017- Integrated Tax (Rate) dated 28.06.2017.
20/2021	28/12/2021	Seeks to amend Notification No 22/2018- Integrated Tax (Rate) dated 26.07.2018
21/2021	31/12/2021	Seeks to supersede notification 15/2021- IT(R) dated 18.11.2021 and amend Notification No 8/2017- Integrated Tax (Rate) dated 28.06.2017.
22/2021	31/12/2021	Seeks to supersede notification 14/2021- IT(R) dated 18.11.2021 and amend Notification No 1/2017- Integrated Tax (Rate) dated 28.06.2017.

Circular issued in the month of December 2021

Circular No.	Date of Issue	Subject
167/23/2021- GST	17/12/2021	GST on service supplied by restaurants through e-commerce operators – reg.
168/24/2021- GST	30/12/2021	Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli.

Orders

No order was issued in the month of December 2021

Removal of Difficulty Orders December 2021

No order was issued in the month of December 2021

Source: www.cbic.gov.in

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CA Aanchal Kapoor, Speaker



CA Amish Sangoi Spl Guest
Practicing CA Mumbai

Topic
**LABYRINTH of
INPUT TAX CREDIT
UNDER GST**

Starting GST Sunrise Club

First Meeting
29th January, 2022 Saturday 11-12 AM

Your membership in GST Sunrise Club will provide a powerful path to stay connected, engaged, and up-to-date with everything happening in Goods & Services Tax. Every month there will be an online discussion on the latest issues in GST via google meet platform. In the meeting, members may ask queries, or alternatively email query at gstatoneplace@gmail.com a week before the Meeting.

Become Member

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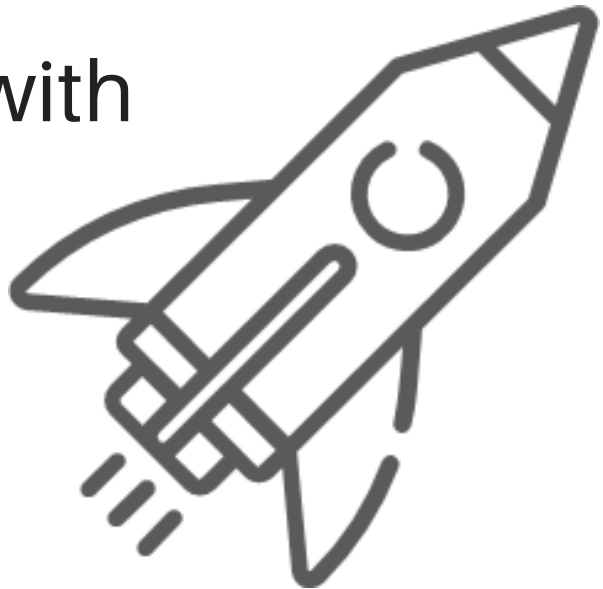
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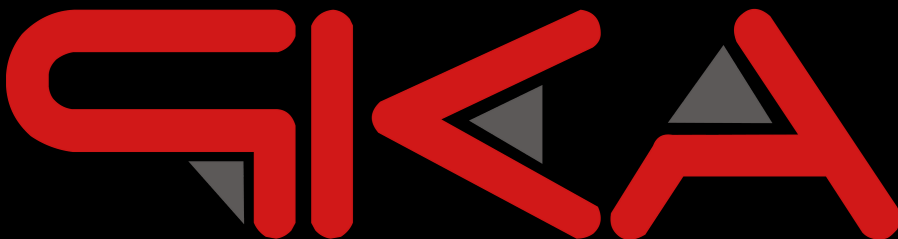
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PKA Consultants