L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

FEBRUARY 2, 2022

INDIRECT TAX

Budget 2022 – GST Proposed Amendments

UPDATE NO. 3 OF 2022

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exceeding expectations
SINCE 1985

The Update is being divided into following topics:

A. INPUT TAX CREDIT

I. AMENDMENT IN SECTION 16 AND 38 OF THE CGST ACT
II. AMENDMENT IN SECTION 41 OF THE CGST ACT

B. RELAXATION IN TIME-LIMITS FOR CERTAIN COMPLIANCES

C. RETURNS

I. RESTRICTIONS IN RETURN FILING
II. OMISSION OF TWO-WAY COMMUNICATION PROCESS IN RETURN FILING

D. INTEREST ON INELIGIBLE ITC AVAILED AND UTILIZED

E. MISCELLANEOUS

I. CANCELLATION OR SUSPENSION OF REGISTRATION
II. LEVY OF LATE FEE
III. PAYMENT OF TAX
IV. CHANGES IN REFUND PROVISIONS
V. RETROSPECTIVE AMENDMENTS

A. INPUT TAX CREDIT

A.1. AMENDMENT IN SECTION 16 AND 38 OF THE CGST ACT

- A new condition has been inserted under Section 16(2) to provide that ITC on invoice / debit note can be availed only if such ITC has not been restricted under Section 38.
- The present Section 38 has been substituted in entirety.
- The new section 38 provides that an auto generated statement (GSTR-2B) containing details of ITC shall be made available to the recipients.
- Such statement will contain details of inward supplies in respect of which ITC may be available to recipient.
- The statement will also specify details of supplies in respect of which ITC cannot be availed, wholly or partly, by the recipient if such supplies are received from the following persons:
    - A registered person who has furnished details of supplies under Form GSTR-1 within such period of taking registration as may be prescribed.
    - A registered person who has defaulted in payment of GST and the default continues for the prescribed period.
    - A registered person whose GST payable as per his Form GSTR-1 exceeds GST paid by him as per Form GSTR-3B during the prescribed period and such excess is beyond the prescribed limit.
    - A registered person who has availed ITC as per Form GSTR-3B in excess of ITC that can be availed by him as per Form GSTR-2B and such excess is beyond the prescribed limit.
    - A registered person who has defaulted in discharging his GST liability by utilizing excess ITC than the permissible limit under Section 49 (12) of CGST Act.
    - By other prescribed class of persons.

L&S COMMENTS

- The requirement of furnishing details of inward supplies (Form GSTR-2) by the recipient as per the present section has been done away with.
- The eligibility to avail ITC in the hands of recipient has been linked with various defaults made by the supplier.
- Whether the recipient will be eligible to take credit once the default has been rectified by the supplier will have to be seen.

A.2. AMENDMENT IN SECTION 41 OF THE CGST ACT

- Present Section 41 is substituted in entirety so as to remove the concept of provisional credit.
- ITC can now be availed basis the self-assessment.
- However, the same will have to be reversed along with interest in case the supplier has not paid the tax to the Government.
- Further, the credit can be re-availed upon payment of tax by supplier to the Government.

L&S COMMENTS

We await clarity with respect to the manner of communication to recipient about the non-payment of tax and subsequent payment of tax by supplier to the Government. Further, there is no mechanism to claim interest paid at the time of reversal in case the supplier has made payment of tax to the Government subsequently.

B. RELAXATION IN TIME-LIMITS FOR CERTAIN COMPLIANCES

The time-limit for following compliances have been extended to 30th November of the next Financial Year (FY)

<table>
<tr><th>Section</th><th colspan="2">Description</th></tr>
<tr><td rowspan="3">Section 16(4)
Time-limit to avail ITC</td><td colspan="2">Input tax credit (ITC) is allowed to be availed till</td></tr>
<tr><td>Existing provision</td><td>Proposed Amendment</td></tr>
<tr><td>Earlier of
• Due date of furnishing of the return under Section 39 for the month of September following the end of FY to which such invoice or debit note pertains or
• Furnishing of annual return (GSTR-9),</td><td>Earlier of
• 30th November following the end of FY to which such invoice or debit note pertains or
• Furnishing of GSTR-9</td></tr>
</table>

<table>
<tr><th>Section</th><th colspan="2">Description</th></tr>
<tr><td rowspan="3">Section 34(2)
Time-limit to declare CN</td><td colspan="2">Credit Note (CN) is allowed to be declared in the return till</td></tr>
<tr><td>Existing provision</td><td>Proposed Amendment</td></tr>
<tr><td>Earlier of
• September following the end of FY in which such supply was made, or

• Date of furnishing of GSTR-9</td><td>Earlier of
• 30th November following the end of FY in which such supply was made, or

• Date of furnishing of GSTR-9</td></tr>
<tr><td rowspan="3">Proviso to Section 37(3)
Time-limit to rectify errors / omissions in GSTR-1</td><td colspan="2">Rectification of errors / omissions in GSTR-1 is allowed till</td></tr>
<tr><td>Existing provision</td><td>Proposed Amendment</td></tr>
<tr><td>Earlier of
• Furnishing of the return under section 39 for the month of September following the end of FY to which such details pertain, or

• Furnishing of GSTR-9</td><td>Earlier of
• 30th November following the end of FY to which such details pertain, or

• Date of furnishing of GSTR-9</td></tr>
<tr><td rowspan="3">Proviso to Section 39(9)
Time-limit to rectify omission / incorrect particulars in GSTR-3B</td><td colspan="2">Rectification of errors / incorrect particulars in GSTR-3B is allowed till</td></tr>
<tr><td>Existing provision</td><td>Proposed Amendment</td></tr>
<tr><td>Earlier of
• Due date for furnishing of return for the month of September or second quarter following the end of FY to which such details pertain, or

• Actual date of furnishing of GSTR-9</td><td>Earlier of
• 30th November following the end of FY to which such details pertain, or

• Actual date of furnishing of GSTR-9</td></tr>
</table>

Section	Description	
Section 52(6): Time-limit to rectify omission/ incorrect particulars in GSTR-8	Rectification of errors / incorrect particulars in GSTR-8 is allowed uptill	
	Existing provision	**Proposed Amendment**
	Earlier of • Due date for furnishing of return for the month of September or second quarter following the end of FY, or • Actual date of furnishing annual statement	Earlier of • 30th November following the end of FY or • Actual date of furnishing annual statement

L&S COMMENTS

- The above amendments have tried to provide uniform date for various compliances to 30th November of next FY
- Whether above amendments have linked the time-line to return for the month of November of next FY or October of next FY?

C. RETURNS

C.1. RESTRICTIONS IN RETURN FILING

- **GSTR-1:** Details of outward supplies (GSTR-1) is not allowed to be furnished for a tax period, if GSTR-1 for any of the previous tax periods has not been furnished. Power to provide relaxation for a registered person or class of registered person. *[Section 37(4)]*

L&S COMMENTS

- Presently, on common portal, GSTR-1 is not allowed to be furnished for a tax period, if GSTR-1 for any of the previous tax periods has not been furnished. The same has been proposed to be inserted in Section 37(4) by Finance Bill, 2022.
- Also, at present, GSTR-3B is mandatory to be filed for GSTR-1 as per Rule 59(6) of the CGST Rules.

- **GSTR-3B:** Return under Section 39 (GSTR-3B) is not allowed to be furnished for a tax period if GSTR-1 for such tax period is not furnished. Power to provide relaxation for a registered person or class of registered person. *[Section 39(10)]*

L&S COMMENTS

Presently, as per Section 39(10), GSTR-3B is not allowed to be furnished for a tax period if GSTR-3B for any of the previous tax periods has been not been furnished. Post-amendment, GSTR-3B filing will succeed GSTR-1 filing mandatorily.

C.2. OMISSION OF TWO-WAY COMMUNICATION PROCESS IN RETURN FILING

- Omission of provisions covering / referring two-way communication process between supplier and recipient in return filing.

- Omission of proviso to Section 37(1), Section 37(2), Section 41, Section 42 and Section 43A and reference to said sections in Section 16(2)(c), Section 37(3), Section 39(9), Section 48(2), Section 49(2), proviso to Section 54(1) and Section 168.

D. INTEREST ON INELIGIBLE ITC AVAILED AND UTILIZED

[Section 50(3) of the CGST Act]

- Section 50 (3) of the CGST Act to be amended retrospectively, w.e.f. 01.07.2017, to provide that interest is to be paid by a taxpayer on "ineligible ITC availed and utilized" and not just on "ineligible ITC availed".

- The same is in the spirit of earlier Council decision that interest is to be charged only in respect of net cash liability.

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L&S COMMENTS

The above is a welcome decision since departmental officers were raising interest demand on ITC wrongly availed even though not utilized. However, question may arise with regard the to refund entitlement on interest paid at 24% in terms of the unamended section which has been removed with retrospective effect.

E. MISCELLANEOUS

E.1. CANCELLATION OR SUSPENSION OF REGISTRATION *[SECTION 29 OF THE CGST ACT]*

- Section 29 (2) (b) to be amended to provide for cancellation of registration of a composition dealer if he fails to file return within period of three months from the due date of furnishing GSTR-4.

- In respect to other registered persons, a period shall be prescribed by the CGST Rules.

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L&S COMMENTS

- The amendment has been made to streamline cancellation provisions applicable to the composition dealer with returns to be furnished by such dealer.
- The earlier provisions provided for cancellation only after failure to furnish returns for three consecutive tax periods whereas for composition dealers it is an annual return in FORM GSTR-4 which is required to be furnished.

- Further, for other registered persons, a continuous period of non-filing of returns shall be prescribed instead of existing period of six months.

E.2. LEVY OF LATE FEE *[SECTION 47]*

- Section 47 to be amended to provide for late fee on delay in filing of TCS return (i.e. FORM GSTR-8).

- Further, reference to Section 38 have been removed considering the other proposed amendments.

L&S COMMENTS

Presently there is no late fee for delay in filing TCS returns. The provisions have been amended to extend the levy of late fee in case an electronic commerce operator fails to submit FORM GSTR-8 by the due date prescribed under Section 52(4) of the CGST Act.

E.3. PAYMENT OF TAX *[SECTION 49]*

- Sub section (10) of Section 49 to be amended to allow for transfer of CGST and IGST amount from a registered person's cash ledger between distinct persons.

- The said transfer is subject to the condition that there is no unpaid liability in the electronic liability register.

L&S COMMENTS

This is a welcome change. Earlier the transfer of cash ledger balance was only allowed between different heads of the same registered person.

- Sub-Section (12) has been inserted to specify such maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.

L&S COMMENTS

This amendment appears to provide legal sanctity to Rule 86B of the CGST Rules.

E.4. CHANGES IN REFUND PROVISIONS *[SECTION 54]*

- Sub Section 1 to be amended to explicitly provide that refund claim of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed. Currently, provision provided for refund through return furnished under section 39.

L&S COMMENTS

The amendment has been made to streamline refunds with the present procedure which is through Form RFD-01 and not through return furnished under Section 39.

- Sub Section 2 to be amended to provide for 2 years' time limit instead of 6 months' time limit for filing application for refund pertaining to notified specialised agencies of United Nations and other organisations specified in Section 55 of the CGST Act.

- The sub-section 10 provided restrictions on claiming refund of ITC on account of inverted duty structure and zero-rated supply in a case where registered person has defaulted in furnishing any return or has liability to pay any tax, interest or penalty. Now the said sub-section has been made applicable to all types of refunds under Section 54.

- Sub clause (ba) to be inserted under definition of *relevant date* for claiming refund under Section 54 to cover specific case of supplies made to SEZ, wherein relevant date shall be date for furnishing GSTR-3B for such supplies.

L&S COMMENTS

Earlier, the date of payment of tax was considered as the relevant date for such purpose. There was no specific provision for meaning of relevant rate in such cases wherein refund of inputs/input services is claimed.

E.5. RETROSPECTIVE AMENDMENTS

- Exemption from GST to unintended waste generated from production of fish meal. No refund to be made available for tax already collected. From 1st July 2017 to 30th September 2019. No refunds to be provided for tax already collected.

- Retrospective Effect given to Notifications No. 25/2019- Central Tax (R) dated 30.09.2019 which declared service by way of grant of alcoholic liquor license, against consideration in the form of license fee as neither a supply of goods nor services. No refunds to be provided for tax already collected.

L&S COMMENTS

In Service Tax regime, notification provided for refund of tax within a specified time-period. Further, it needs to be analysed if refund can be denied through retrospective effect to the notification.

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