L&S UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

1 OCTOBER 2022

INDIRECT TAX

GST Update on changes by Finance Act, 2022 as effective from 1 October 2022

[Notification 18/2022-Central Tax dated 28 September 2022}

UPDATE NO. 49 OF 2022

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exceeding expectations
SINCE 1985

A. The Finance Act, 2022 **("Finance Act")** has received the presidential assent on 30th March 2022. While Sections 115 to 124 of the Finance Act have come into force on the date of the enactment of Finance Act i.e., from 30th March 2022, Section 110(c) and Section 111 of the Finance Act amending Sections 49(10) and 50(3) of the Central Goods and Services Tax Act, 2017 **("CGST Act")** have come into force from 5th July 2022 vide Notification No. 9/2022-C.T., dated 5 July 2022.

B. Now, certain Sections of Finance Act amending CGST Act have also been notified to come into force from 1 October 2022. The details of such sections are as under:

Finance Act, 2022	Amendment

*Section 100 - **Amendment of Section 16 (Eligibility and conditions for taking input tax credit.)***	• A new condition has been inserted under Section 16(2)(ba) which provides that input tax credit **("ITC")** on invoice / debit note can be availed only if such ITC has not been restricted under Section 38. *(Section 38 has also been amended and the same is discussed in detail in ensuing paragraphs).*
	
	• Section 107 of the Finance Act has *inter-alia* omitted the Section 43A **(Procedure for furnishing return in Form GSTR-2 and availing input tax credit),** hence, consequential reference to such section has also been omitted from Section 16(2)(c).
	
	• Relaxation in timeline has been provided for availment of ITC. A registered person can avail the ITC on any invoice or debit note at the earlier of-
	  • 30th November following the end of FY to which such invoice or debit note pertains, or
	  • Date of furnishing of annual return (GSTR-9).
	
	Previously, such time-limit was 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
	  • Date of furnishing of annual return (GSTR-9).

	L&S Comments • Whether above amendment has linked the timeline to return for the month of November of next FY or October of next FY? • Whether the above amendment would be applicable in respect of invoices or debit note issued in FY 2021-22?
Section 101 - ***Amendment of Section 29 (Cancellation or suspension of registration.)***	Section 29(2)(b) has been amended to provide for cancellation of registration of a composition dealer if he fails to file return within a period of three months from the due date of furnishing GSTR-4. In respect to other registered persons, tax period shall be prescribed by the CGST Rules. Correspondingly, Rule 21 has also been amended to provide that registration shall be cancelled- • in case monthly return in Form GSTR-3B has not been filed for a continuous period of six months, or • in case quarterly return in Form GSTR-3B has not been filed for a continuous period of two tax periods.
Section 102 - ***Amendment of Section 34 (Credit and debit notes)***	Similar to relaxation provided in respect of availment of ITC as per Section 16(4), relaxation has also been provided for declaring the details of credit note in the returns. It shall be earlier of- • 30th November following the end of FY in which such supply was made, or • Date of furnishing of annual return (Form GSTR-9). **L&S Comments** • Whether above amendment has linked the timeline to return for the month of November of next FY or October of next FY? • Whether the above amendment would be applicable for credit note in respect of invoice issued in FY 2021-22?

Section 103 - ***Amendment of Section 37 (Furnishing details of outward supplies.)***	• Provision relating to two-way communication process between supplier and recipient in return filing has been omitted. Hence, the said requirement has been removed from Section 37. • Relaxation has been provided in timeline for rectifying the errors / omissions in Form GSTR-1. It shall be earlier of- • 30th November following the end of FY in which such supply was made, or • Date of furnishing of annual return (Form GSTR-9). **L&S Comments** • Whether above amendment has linked the timeline to return for the month of next FY or October of next FY? • Sub-section (4) to section 37 has been inserted to provide that the details of outward supplies (Form GSTR-1) is not allowed to be furnished for a tax period, if Form GSTR-1 for any of the previous tax periods has not been furnished. Government may issue notification to allow a registered person or class of registered persons to furnish Form GSTR-1 for tax period, even if GSTR-1 of any of the previous tax periods has not been furnished.
Section 104 - ***Substitution of new section for Section 38 (Communication of details of inward supplies and input tax credit)***	The present Section 38 has been substituted in entirety. The new Section 38 provides that an auto-generated statement (Form 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 restriction in ITC in the hands of recipient has been linked with various defaults made by the supplier.
- This provision is made effective from 1st October 2022, even though the recipient may not have complete visibility regarding defaults made by the supplier in respect of payment of tax or excess availment of ITC.
- Whether the recipient will be eligible to take credit once the default has been rectified by the supplier will have to be seen.

*Section 105 - **Amendment of Section 39 (Furnishing of returns)***

- Previously, every registered non-resident taxable person was required to file return in Form GSTR-5 within twenty days after the end of a calendar month. Now, after the amendment, such return needs to be filed within thirteen days after the end of a calendar month.

- Registered person furnishing quarterly return in Form GSTR-3B under the proviso to section 39(1) shall pay to the Government as follows:
  - a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or
  - b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.

- Provision relating to two-way communication process between supplier and recipient in return filing has been omitted. Hence, such requirement has been removed from Section 39.

- Rectification of errors / incorrect particulars in Form GSTR-3B is allowed till earlier of-
  - 30th November following the end of FY to which such details pertain, or
  - Date of furnishing of annual return (Form GSTR-9).

- Return under Section 39 (Form GSTR-3B) is not allowed to be furnished for a tax period if Form 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 not been furnished.
Post-amendment, Form GSTR-3B filing will succeed Form GSTR-1 filing mandatorily.

*Section 106 - **Substitution of new section for Section 41 (Availment of input tax credit)***	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
*Section 107 - **Omission of sections 42, 43 and 43A***	Sections 42, 43 and 43A stand omitted with effect from 1st October 2022. These sections dealt with provisions covering / referring two-way communication process between supplier and recipient in return filing.
*Section 108 - **Amendment of section 47 (Levy of late fee)***	Section 47 has been amended to provide for late fee on delay in filing of TCS return (i.e., Form GSTR-8). Further, consequential amendments have been made by removing the reference to Section 38. **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 GSTR-8 by the due date prescribed under Section 52(4) of the CGST Act.

*Section 109 - **Amendment of section 48 (Goods and services tax practitioners)***	Provision relating to two-way communication process between supplier and recipient in return filing has been omitted. Hence, reference of Section 38 has been removed from Section 48.
*Section 110 -**Amendment of section 49 (Payment of tax, interest, penalty and other amounts)***	Provision relating to two-way communication process between supplier and recipient in return filing has been omitted. Hence, reference of section 43A has been removed from Section 49. 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 has provided legal sanctity to Rule 86B of the CGST Rules, which has been in force from 01.01.2021.
*Section 112 - **Amendment of section 52 (Collection of tax at source))***	Rectification of errors/ incorrect particulars in Form GSTR-8 is allowed till earlier of- • 30th November following the end of FY or • Date of furnishing annual statement.
*Section 113 - **Amendment of section 54 (Refund of tax)***	• Sub Section (1) has been 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. Accordingly, consequential amendment has also been brought in Rule 89 of CGST Rules.

	• Sub Section (2) has been 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 tax 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) has been 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 prescribing the meaning of relevant rate in such cases wherein refund of inputs/input services were claimed.
*Section 114 - **Amendment of Section 168 (Power to issue instructions or directions)***	Provisions relating to two-way communication process between supplier and recipient in return filing has been omitted. Hence, reference of Section 38 has been removed from Section 168.

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