

Important GST changes effective from January 1, 2022

In the second fortnight of December 2021, several notifications¹ were issued effecting important amendments in the Central Goods and Services Tax Act, 2017 ('CGST Act') as well as Central Goods and Services Tax Rules, 2017 ('CGST Rules'). These include changes set-forth in the Finance Act, 2021 and Central Goods and Services Tax (Eighth Amendment) Rules, 2021, which have been given effect from January 1, 2022. A synopsis of these changes in the GST Law is described here:

1. Enhancement in scope of supply

- Definition of supply under Section 7 of the CGST Act has been amended retrospectively (i.e. w.e.f. July 1, 2017) to include activities or transactions between associations and its members, for consideration. The explanation inserted to this provision clarifies that the person and its members or constituents shall be deemed to be two separate persons. This amendment will bring to tax clubs and associations and unwinds the impact of the judgement of the Supreme Court in *State of West Bengal v. Calcutta Club & Others [TS-779-SC-2019-VAT]*.

2. Availment of ITC – 100% matching with data on the GSTN (portal) in Form GSTR-2B

- Section 16(2) of the CGST Act provided for four conditions for availment of Input Tax Credit (ITC), viz, possession of tax invoice / debit note, receipt of goods or services, payment of tax with the Government and furnishing of GST returns.
- Rule 36(4) of the CGST Rules provided for a cap on availment of ITC to the extent of 105% of the invoices / debit notes furnished by the supplier in their outward supply statement, in Form GSTR-1 (i.e., 105% of the matched ITC could be availed by a taxpayer).
- Effective January 1, 2022, an additional condition has been enforced by way of clause (aa) in Section 16(2). It provides that ITC shall be available only in respect of those invoices or debit notes which have been furnished by the suppliers in their statement of outward supplies and, which is communicated to the recipient.
- Parallel changes have been made in Rule 36(4) to provide that ITC shall be available if, a) the details of invoices / debit notes have been furnished by the supplier in its statement of outward supplies and, b) such invoice / debit note have been communicated in Form GSTR-2B.

¹ Notification No. 38/2021 and 39/2021 - Central Tax, dated December 21, 2021
Notification No. 40/2021 - Central Tax, dated December 29, 2021



- As a result, taxpayers need to reconcile the ITC available in their books with that appearing in Form GSTR-2B every month and avail ITC on those invoices / debit notes only which appear in Form GSTR-2B. This would include the cases where tax on a supply is payable under reverse charge mechanism and the supplier is registered.
- Notably, Form GSTR-2B is a static form, which covers invoices / debit notes furnished by the suppliers till the due date of furnishing of Form GSTR-1. Thus, if any supplier furnishes the invoice after such date, ITC on the same shall not appear in Form GSTR-2B, and therefore availment of such ITC shall be deferred.

3. Form GSTR-1 vs Form GSTR-3B mismatch

- As per Section 75(12) of the CGST Act, if any amount of 'self-assessed tax' remains unpaid or short paid, the same shall be recovered in terms of Section 79, which provides for measures of recovery, such as detention and selling of goods of taxpayer, recovery from debtors, seizure of property etc. without issuance of a show cause notice ('SCN').
- An Explanation has been inserted to Section 75(12), which provides that self-assessed tax would include tax payable on a supply which is reported in Form GSTR-1 but is not paid in Form GSTR-3B.
- The GST Department can now adopt the recovery measures under Section 79 without issuance of SCN, if there is a mismatch in Form GSTR-1 and Form GSTR-3B.

4. Restriction on filing Form GSTR-1 till Form GSTR-3B is pending

- Rule 59(6)(a) provided a restriction on filing of Form GSTR-1 if Form GSTR-3B has not been furnished for preceding two months. An amendment was made to substitute preceding two-month period to preceding month.
- Henceforth, if a monthly filer has not furnished Form GSTR-3B for preceding month, then such taxpayer shall not be allowed to file Form GSTR-

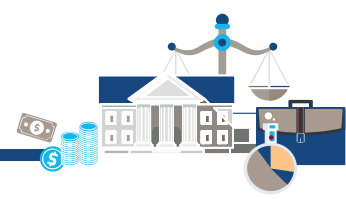
1 for subsequent month (till such pending Form GSTR-3B is filed). Suitable functionality has been introduced on the GSTN (portal) as well.

5. Power of provisional attachment widened

- Section 83 of the CGST Act grants power to the Commissioner to provisionally attach property, including bank accounts, to protect the revenue's interest in case of non-filers, unregistered dealers in cases of summary assessment and SCNs.
- These powers have now been extended to all situations of assessments, scrutiny of returns, inspection, search, seizure, arrest, demands and recovery. The provision has been extended to any person who retains the benefit of a transaction covered under specified situations (cases of invoicing without supply and vice-versa, ITC without receipt of supply, incorrect distribution of ITC etc.). Further, such powers can now be exercised after initiation of the proceedings.

6. Detention, seizure, confiscation of goods / conveyance in transit

- Section 129 of the CGST Act has been amended to provide for penalty equal to 200% of the amount of tax payable, instead 100% of tax payable and penalty equal to 100% of the amount of tax payable.
- Post detention or seizure of goods / conveyance, the proper officer is now required to issue a notice within 7 days of detention or seizure and issue final order within further 7 days.
- If the amount of penalty is not paid within 15 days of order, the goods / conveyance shall be sold to recover the penalty. An option shall be given to the transporter to pay the penalty or INR 1 lakh, whichever is less, for release of the conveyance.
- Another amendment is that pre-deposit of 25% will now be required in order to file an appeal against penalty proposed under Section 129 of the CGST Act.



7. Power to call for information

- The power of the Commissioner is extended to enable him / her to call for any information (by order) relating to any matter in connection with the CGST Act, which was earlier restricted to statistical information for notified cases. Information collected cannot be used for proceedings without granting the person (from whom it is gathered) an opportunity of being heard.

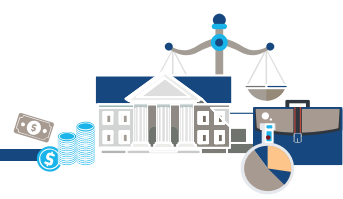
8. Aadhar authentication

- Vide introduction of Rule 10B, Aadhar authentication has been made mandatory in cases where taxpayer needs to file an application for revocation of cancellation and make refund applications.

recent times. It is important for the taxpayers to ensure compliances, so that they do not get caught in the crossfire meant to catch hold of fraudulent taxpayers.

Dhruva Comments:

- With amendment in Section 16(2), the conditions for availing ITC have become more rigorous and onerous for taxpayers. This would increase the burden on recipients for ensuring compliance from the suppliers, for availing ITC. Any excess claim of ITC (read as unmatched amounts) could potentially lead to blocking of the electronic credit ledger (ECL).
- It is thus important for taxpayers to perform an invoice-level matching every month before availing ITC in their monthly return in Form GSTR-3B. It re-emphasises the need to have automation in invoice booking system and its matching.
- The taxpayers also need to ensure there is no mismatch in output tax liability reported in Form GSTR-1 and the tax payment made in Form GSTR-3B. If any inadvertent error is made, the same should immediately be reported to the jurisdictional GST Authorities, so as to avoid any adverse proceedings. It is hoped that the GST Department will allow some cooling period after noticing such a discrepancy, so that taxpayers address the mismatch.
- All these changes reflect the intention of the Government to curb situations of fraud, fake invoicing etc. which had become rampant in the





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