



## Dhruva Alert – Goods and Services Tax Amendment Act

The Government has recently issued notifications to give effect to the provisions of the Central Goods and Services Tax (Amendment) Act, 2018 and Integrated Goods and Services Tax (Amendment) Act, 2018.

Our alert provides an insight into some of the key amendments.

### Amendments applicable from February 1, 2019

#### 1. Amendment to Schedule III of CGST Act – Transactions neither supply of goods nor supply of service

##### Amendment and Dhruva Comments

##### Amendment

- Following transactions are added to Schedule III of CGST Act which prescribes certain transactions as 'no-supply' transactions:
  - Out and out supply by a registered person i.e. supply of goods from non-taxable territory to another place in non-taxable territory without entering into India;
  - Supply of warehoused goods to any person before clearance for home consumption;
  - Supply of goods by consignee to any other person, by endorsement of documents of title to goods, after the goods are dispatched from the port of origin located outside India but before clearance for home consumption i.e. High seas sale.

##### Dhruva Comments

- *The insertion of out and out supply by a registered person in Schedule III would clear the ambiguity on taxability of such transactions. An advance ruling of M/s Synthite Industries Ltd., Ernakulam<sup>1</sup> was issued on similar issue which held that such a supply is a non-taxable supply. The amendment would remove the uncertainty existing around*

<sup>1</sup> CT/2275/18-C3 dated March 26, 2018



*such transactions and also the parallel amendment to the input tax credit provisions would safeguard the tax payers from any unnecessary input tax credit reversals.*

- *As regards, High seas sale and sale within customs bonded warehouse, while Circulars have been issued in the past stating that IGST shall be payable only once i.e. by the ultimate importer, there was no clarity on the nature and treatment of such transactions in the hands of the seller. Such an amendment would bring in more clarity for the trade.*

## 2. Amendment to input tax credit provisions - Section 17 of CGST Act

### Amendment and Dhruva Comments

#### Amendment

- Amendments in the input tax credit provisions as under:
  - Section 17(3) enlists specified transactions as exempt supply for credit reversal. An Explanation is inserted to specify that the term 'value of exempt supply' shall exclude the non-supply activities or transactions covered by Schedule III except, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
  - Following amendments are made in Section 17(5) which deals with restrictions on availment of input tax credit:
    - Substitution of Clause (a):**
      - ITC shall be restricted only on Motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver);
      - However, credit on aforesaid motor vehicles is allowed if they are used for specified purposes.
    - Insertion of Clause (aa):**
      - ITC is restricted on vessels and aircrafts except when the same are used for specified purposes including transportation of goods.
    - Insertion of Clause (ab):**
      - Services of general insurance, servicing, repair and maintenance in relation to motor vehicles, vessels and aircraft specified in clause (a) or clause (aa) above except:
        - When such motor vehicle, aircraft or vessel is used for the purposes specified in clause (a) or clause (aa);
        - Where the services are received by a taxable person engaged in the manufacture of such motor vehicle, vessel or aircraft or
        - Where the services are received by a taxable person who is engaged in the supply of general insurance services in respect of such motor vehicle, vessel or aircraft.
    - Substitution of Clause (b):**
      - Substitution is to effect the replacement of rent-a-cab, life insurance and health insurance with leasing, renting or hiring of motor vehicles, vessels or aircraft



	<p>referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance”;</p> <ul style="list-style-type: none"><li>○ Input tax credit corresponding to membership of a club, health and fitness centre as well as travel benefits extended to employees on vacation continue to be restricted;</li><li>○ Input tax credit shall be allowed in respect of goods or services or both specified in all sub-clauses under clause (b) (viz. food and beverages, outdoor catering, life insurance, renting / hiring of motor vehicle, health service, etc.) instead of earlier sub-clause (iii) only (viz. only for rent-a-cab, life insurance and health insurance service), where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>Any Schedule III transaction i.e. non-supply transactions such as High Seas sale, sale of bonded goods, out &amp; out sale etc. (other than sale of land and building) would not be subject to credit reversal.</i></li><li>• <i>Earlier, input tax credit on all type of motor vehicles was disallowed, except when used for specified purposes mentioned therein. Pursuant to the amendment, input tax credit is denied only in case of motor vehicles for transportation of persons having approved capacity of not more than 13 persons (except when used for specified purposes).</i></li><li>• <i>Credit on rent-a-cab restricted only to renting of passenger motor vehicle (upto 13 persons), vessels &amp; aircraft, thereby allowing credit on hiring of buses for transportation of employees.</i></li></ul>
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### 3. Amendment to conditions for availing input tax credit on services under Section 16(2) of CGST Act

<b>Amendment</b>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• Section 16(2) prescribes various conditions for availment of input tax credit (ITC) (viz. receipt of goods / services, furnishing of returns, etc.). The Explanation to the said Sub-Section is amended in respect of the condition of receipt of services. Such amendment deems a service to be received by the registered person even in cases where the services are provided by supplier to any person on the direction of and on account of such registered person.</li></ul>
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### 4. Amendment to Schedule I of CGST Act – Activities to be regarded as supply even if made without consideration

<b>Amendment and Dhruva Comments</b>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• Clause 4 of Schedule I which earlier covered only ‘import of services by a taxable person...’ is amended to state – ‘import of services by a person...’</li></ul>
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	<p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>This amendment is intended to increase the scope of supplies to be covered in Schedule I. Earlier, only imports by a taxable person as prescribed in Schedule I was covered, thereby excluding the persons not registered under GST, but still undertaking import of services.</i></li><li>• <i>Such an amendment will make an unregistered person undertaking such import of services in terms of Schedule I, in the course or furtherance of business, liable for mandatory registration under GST.</i></li></ul>
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## 5. Amendment to Section 9(4) of CGST Act and 5(4) of IGST Act – Reverse charge on supplies from unregistered persons

<p><b>Amendment and Dhruva Comments</b></p>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• Section 9(4) of CGST Act, providing for reverse charge on the supplies received from unregistered persons, is amended so that it applies only to such class of persons as may be notified in respect of supply of specified categories of goods or services or both.</li><li>• Similar amendment is carried out in Section 5(4) of IGST Act.</li><li>• Owing to this amendment, Government has vide Notification No. 02/2019-CTR rescinded Notification No. 08/2017-CTR which gave exemption from leviability of RCM on Supply from Unregistered Persons.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>The aforesaid provision was deferred till September 30, 2019 due to practical difficulty being faced by the industry. The amended provision restricts applicability of reverse charge on supplies received from unregistered persons only to a select class of persons and select category of supplies and thereby, would substantially reduce compliances in terms of payment of taxes, claiming input tax credit, raising self-invoices, disclosure in returns, etc. Further GST would not be attracted on all unregistered dealer procurements. The Government is yet to notify such class of persons, goods and services on which RCM on supply from unregistered persons shall apply.</i></li></ul>
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## 6. Amendment to definition of ‘Export of Services’ – Section 2(6)(iv) of IGST Act

<p><b>Amendment and Dhruva Comments</b></p>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• One of the conditions for a transaction to qualify as export of services is receipt of payment by the service provider in convertible foreign exchange. Amendment is made in the definition to allow receipt of payment in Indian Rupees (‘INR’) in cases permitted by the Reserve Bank of India (‘RBI’).</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>Receipt of payment in INR for services provided to Nepal and Bhutan is a permissible payment mechanism as per RBI and thus, such services should qualify as an export pursuant to the said amendment.</i></li></ul>
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	<ul style="list-style-type: none"><li>• <i>Consequential amendment has been carried out in Notification No. 9/2017- Integrated Tax (Rate), dated the 28 June 2017 to remove the entry no. 10D from the exemption notification, namely, 'supply of services having place of supply in Nepal or Bhutan, against payment in INR'.</i></li></ul>
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## 7. Amendment to Place of Supply – Section 12(8) of IGST Act

<b>Amendment and Dhruva Comments</b>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• Section 12(8) provides for place of supply of services by way of goods transportation services including by way of mail or courier. A Proviso has been added to sub-section (8) to state that in case of transportation of goods from India to a place outside India, the place of supply shall be the place of destination of such goods.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>The intention of the said amendment is to provide a level playing field to domestic transport companies by not levying GST on services provided for transportation of goods to a place outside India.</i></li><li>• <i>It is relevant to note that Sr. No. 19A and 19B of Notification No.12/2017-Central tax (Rate) dated June 28, 2017 (as amended) exempts outbound movement of goods by an aircraft or a vessel (upto September 30, 2019). Further, such services by a vessel is excluded from exempt supply, thereby enabling availment of credit in respect of such transactions. As regards, transportation by an aircraft, the restriction on availment of credit shall apply, it being an exempt supply.</i></li><li>• <i>It is also pertinent to note that, post the expiry of the exemption period, even if the POS is outside India for such outbound movements, the transaction shall not qualify as export of services and shall be liable to IGST thereafter.</i></li></ul>
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## 8. Amendment to Place of Supply – Section 13(3)(a) of IGST Act

<b>Amendment and Dhruva Comments</b>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• Presently, the place of supply in case of services supplied in respect of goods required to be made physically available to the supplier of services is the location where the services are actually performed. However, the second proviso to the sub-section (a) carved an exception for goods temporarily imported in India for repairs and exported post performance of such repairs. Amendment has been made to the said proviso to include goods which are temporarily imported for repairs or any other treatment or process and exported back without being put to use in India post such treatment or process.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>The said amendment seeks to exclude the import and re-export of goods after conducting any treatment or process on the same from the tax net. Thus, service in relation to goods imported for job work should not be liable to GST.</i></li></ul>
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## 9. Amendment in Section 12(2) and 13(2) of CGST Act – Time of supply in relation to goods and services respectively

<b>Amendment and Dhruva Comments</b>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• Currently, Section 12(2) which prescribes time of supply of goods states that, it shall be earlier of date of issue of invoice or last date on which invoice is required to be issued under Section 31(1) of CGST Act or date of receipt of payment. Vide the amendment the reference to sub-section 1 of Section 31 is deleted, thereby making a reference to entire Section 31.</li><li>• Similar amendment is carried out in Section 13(2) by deletion of sub-section 2 to Section 31, so as to make reference to entire Section 31.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>The said amendment would remove the anomaly which currently exists by referring only to Section 31(1) and 31(2), as the case may be. Going forward, the time limit to raise invoice in case of continuous supply of goods / services shall also be covered.</i></li></ul>
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## 10. Amendment in the definition of ‘service’ – Section 2(102) of CGST Act

<b>Amendment and Dhruva Comments</b>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• An explanation is added in the definition of service to clarify that services would also include facilitating or arranging transactions in securities.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>This amendment seems to be clarificatory in nature to avoid any future disputes. Transaction in securities is excluded from ‘goods’ as well as ‘services’ and any activity in relation to transaction in securities was always covered under the purview of GST.</i></li></ul>
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## 11. Amendment to Section 24(x) of CGST Act – Registration for e-commerce operator

<b>Amendment</b>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• Clause (x) of Section 24 currently states that every e-commerce operator is required to obtain registration. Pursuant to the amendment in the clause, registration shall be required only for those e-commerce operators who are required to deduct TCS under Section 52.</li></ul>
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## 12. Amendment to Section 29(1) & (2) of CGST Act – Cancellation or suspension of registration

<b>Amendment and Dhruva Comments</b>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• A Proviso is being inserted to state that once a person has applied for cancellation of the registration or the proper officer has ordered for cancellation of registration in terms of Section 29(2), then the proper officer may suspend such registration during pendency of proceedings related to cancellation, subject to certain conditions and limitations as may be prescribed.</li></ul>
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	<p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>The said amendment aims to reduce the compliance burden till the procedural formalities for cancellation are completed.</i></li></ul>
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### 13. Amendment to Section 25 of CGST Act – Separate registration for place of business and units / developer of SEZ

<p><b>Amendment and Dhruva Comments</b></p>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• Amendments are made in Section 25 to provide for the following:<ul style="list-style-type: none"><li>– A person having multiple places of business in a State / Union territory may be granted separate registration for each such place subject to prescribed conditions;</li><li>– A person having a Unit in SEZ or a developer of SEZ, shall be granted separate registration distinct from its units located in the DTA;</li></ul></li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>The amendment for separate registration for each place of business is on the same lines as existed under the erstwhile Service Tax and Excise laws.</i></li><li>• <i>Prior to the amendment, only one registration could be taken for multiple place of business in a State/Union territory, except, when there is a separate business vertical. This amendment will enable companies to take separate registration for different lines of business, subject to conditions as may be prescribed, even in a situation where there is no separate business vertical.</i></li><li>• <i>The earlier proviso for separate registration of each business vertical is done away with and correspondingly, the definition of ‘business vertical’ is also omitted from Section 2. It appears that post the removal of the Proviso, registration cannot be taken if there is no separate place of business, even if there is a separate ‘business vertical’. There is no clarification on the status of the registrations which have already been obtained for business verticals operating from the same place of business and could be a subject matter of dispute between the taxpayers and authorities. Rule 8 of CGST Rules required that the SEZ unit / Developer should make a separate application for registration as a business vertical distinct from its other units located outside the SEZ. The Section is now been amended to align the same with the Rules.</i></li></ul>
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### 14. Insertion of Explanation to Section 143(1) of CGST Act – Time limit to bring back or supply inputs or capital goods, after completion of job work

<p><b>Amendment and Dhruva Comments</b></p>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• Section 143(1) of CGST Act provides for a time limit of one year and three years to bring back or supply inputs or capital goods (other than moulds and dies, jigs and fixtures, or tools), respectively, after completion of the job work.</li><li>• A Proviso has been inserted allowing extension of such time limit of one year or three years by a further period of one year and two years, respectively, by the Commissioner upon sufficient cause being shown.</li></ul>
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	<p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>Certain job work processes such as fabrication/manufacture of huge machineries or vessels, etc. require more than a year for completion. The aforesaid amendment relaxes the condition by providing discretion to the authorities to extend the timeline.</i></li></ul>
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### 15. Amendment to Section 34 of CGST Act – Issuance of credit / debit note(s) against tax invoice(s)

<p><b>Amendment and Dhruva Comments</b></p>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• Amendment is made to sub-section (1) and (3) of section 34 to permit registered person to issue consolidated credit / debit notes in respect of multiple invoices issued in a Financial Year without linking the same to individual invoices.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>Issuance of a single credit note against one invoice and linkage has been creating a lot of compliance burden on tax payers, including accounting challenges. This is a very welcome step.</i></li><li>• <i>While issuance of consolidated credit notes / debit notes against multiple invoices is now allowed, in line with the best international practices, it needs to be ensured by the Government that Form GSTR-1 return format is also suitably amended as well as such provision is incorporated in the new return filing system.</i></li></ul>
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### 16. Amendment to Explanation (2)(e) to Section 54 of CGST Act – ‘Relevant date’ while claiming refund of unutilised input tax credit

<p><b>Amendment and Dhruva Comments</b></p>	<p><b>Amendment</b></p> <ul style="list-style-type: none"><li>• Explanation (2)(e) to Section 54 of CGST Act provides for the ‘relevant date’ to be the end of the financial year in which refund claim arises with respect to the unutilized input tax credit pertaining to the following cases:<ul style="list-style-type: none"><li>- zero rated supplies made without payment of tax;</li><li>- inverted rate structure.</li></ul></li><li>• The said explanation is amended to provide for the relevant date as the due date of furnishing return under Section 39. Further, such amendment would apply only to refund claims pertaining to the unutilized input tax credit, arising out of inverted rate structure.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>In order to resolve the overlapping provisions to determine relevant date, the amendment restricts the applicability of Explanation (2)(e) to determine relevant date for refund of unutilized input tax credit, pertaining to inverted rate structure only.</i></li></ul>
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## 17. Amendment to Section 54(8)(a) of CGST Act – Refund of tax paid on zero rated supplies or on inputs / input services used in making such zero-rated supplies

### Amendment and Dhruva Comments

#### Amendment

- Section 54(8) of CGST Act provides for the list of situations where refund can be claimed, wherein the clause (a) provides for refund of tax paid on zero rated supplies or on inputs / input services used in making such zero-rated supplies.
- Said clause (a) is amended to provide for refund of tax paid on export of goods / services or both or on inputs / input services used in making such exports.

#### Dhruva Comments

- *Section 54(8)(e) of CGST Act provides for refund of tax, interest or any other amount, if the incidence such amounts has not been passed. Whereas, no such test for unjust enrichment is provided under clause (a) i.e., refund of tax paid on zero rated supplies or on inputs / input services used for making such zero-rated supplies.*
- *As per Section 16 of IGST Act, zero-rated supplies include export of goods or services and supply of goods or services to an SEZ developer or an SEZ unit.*
- *Hence, in order to apply principle of unjust enrichment to supplies made to SEZ developers/units, the aforesaid clause (a) restricts its application to refund of tax paid on exports or on inputs or input services used for making such exports.*

## 18. Insertion of Explanations to Section 79(1) of CGST Act – Recovery of tax

### Amendment and Dhruva Comments

#### Amendment

- An Explanation is inserted after Section 79(4) of CGST Act (pertaining to recovery of taxes) to state that the word ‘person’ shall include ‘distinct persons’.

#### Dhruva Comments

- *It is a very draconian amendment as it would enable authorities to recover taxes not only from the said person but also from any of the distinct persons e.g. HO located in the same or the other States / Union Territories.*

## 19. Amendment to Section 107(6)(b) and 112(8)(b) of CGST Act and Section 20 of ISGT Act– Pre-deposit for filing Appeal before the Appellate Authority and Appellate Tribunal

### Amendment and Dhruva Comments

#### Amendment

- Section 107(6)(b) of CGST Act provides for payment of pre-deposit amounting to 10% of the tax in dispute before filing an appeal to an Appellate Authority. Vide the amendment, such pre-deposit is restricted to ₹25 crore.
- Section 112(8)(b) of CGST Act provides for payment of pre-deposit amounting to 20% of the tax in dispute (in addition to amount paid under Section 107(6) of CGST Act) before filing an appeal to the Appellate Tribunal. An amendment is made to restrict such pre-deposit to ₹50 crore.



	<ul style="list-style-type: none"><li>• Similar amendment has been made in Section 20 of IGST Act, to provide for a maximum limit of pre-deposit of ₹50 crore and ₹100 crore in case of filing of appeal before Appellate Authority and Appellate Tribunal respectively.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>The said amendments would provide relief in cases involving huge tax litigations / controversies.</i></li></ul>
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## 20. Amendment to section 49(5)(c) and 49(5)(d) of CGST Act – Amendment to the provisions relating to order of utilization of input tax credit relating to State tax / Union Territory tax

<b>Amendment</b>	<b>Amendment</b> <ul style="list-style-type: none"><li>• Amendment is made to the said sub-clauses, to align the order of utilization of input tax credit relating to State tax / Union Territory tax with the restrictions placed on the GST common portal to provide that the credit of State tax/ Union territory tax can be utilized for payment of integrated tax only when the balance of the input tax credit on account of central tax is not available for payment of integrated tax.</li></ul>
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## 21. Introduction of new sub-section 49(A) and 49B of CGST Act – Regulate utilization of input tax credit and enabling powers to Government to prescribe any specific order of utilization of input tax credit

<b>Amendment and Dhruva Comments</b>	<b>Amendment</b> <ul style="list-style-type: none"><li>• Section 49A seeks to specify that a taxpayer shall be allowed to utilize input tax credit on account of Central tax, State tax or Union Territory tax towards payment or integrated tax, Central tax, State tax or Union territory tax only after exhausting all the credit on account of integrated tax available to him.</li><li>• The new Section 49(B) has been introduced to enable the Government, on the recommendations of the GST Council to prescribe any specific order of utilization of input tax credit of any of the taxes viz., integrated tax, central tax, State tax or Union territory tax for the payment of the said taxes.</li></ul> <p><b>Dhruva Comments</b></p> <ul style="list-style-type: none"><li>• <i>The manner of utilization (which credit can be used for payment of what output taxes) was previously prescribed by the GST law. However, the law did not restrict the order of utilization. Amendment to Section 49(5)(c) and Section 49(5)(d) (stated aforesaid) is one such example of prescribing the order of utilization.</i></li><li>• <i>However, insertion of Section 49A which overrides Section 49, now makes it mandatory to exhaust entire IGST credit before utilization of any other credits. This implies that for payment of liability of central tax, State tax or Union territory tax, first entire credit of integrated tax is to be used before utilising any other credits. This would further lead to conundrum to the issue of inter-head credit utilisations.</i></li></ul>
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## 22. Amendment in the expression 'special category states' – Section 22 of CGST Act

<b>Amendment</b>	<b>Amendment</b> <ul style="list-style-type: none"><li>Section 22 is amended to provide that the Government may increase the threshold turnover for registration in special category states from ₹10 lakhs to ₹20 lakhs on recommendations of the Council. The amendment also excludes the states of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand from the expression 'special category States'.</li></ul>
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## 23. Amendment to Section 129(6) of CGST Act – Detention, seizure and release of goods and conveyance in transit

<b>Amendment</b>	<b>Amendment</b> <ul style="list-style-type: none"><li>Failure to make payment of taxes and penalty (in case of detention or seizure of goods or conveyance) within seven days from the date of seizure or detention, allows initiation of further proceedings under Section 130 of CGST Act. Such stipulated period to make payment of taxes and penalty is increased from seven days to fourteen days.</li></ul>
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## 24. Amendment to Section 10 of CGST Act – Composition scheme

<b>Amendment and Dhruva Comments</b>	<b>Amendment</b> <ul style="list-style-type: none"><li>Amendments have been carried out in Section 10 to provide that the government may increase the threshold limit applicable to opt for composition scheme to ₹1.5 crore. The notification extending the threshold limit from ₹1 crore to ₹1.5 crore is yet to be issued.</li><li>Further, composition dealer is permitted to supply services subject to not exceeding 10% of turnover in a state / UT in the preceding financial year or ₹5 lakhs, whichever is higher.</li></ul> <b>Dhruva Comments</b> <ul style="list-style-type: none"><li><i>Manufacturers and dealers who opt for composition scheme can now provide services other than restaurant services subject to the limit prescribed. Therefore, the eligibility to composition scheme will not be affected on account of provision of certain services within the prescribed limits.</i></li><li><i>In its 32<sup>nd</sup> meeting, the GST council had proposed composition scheme for service providers having an annual turnover in preceding financial year up to ₹ 50 lakhs. The Second Amendment Act has not brought composition scheme for service providers.</i></li></ul>
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### **Amendments applicable retrospectively [w.e.f. July 1, 2017]**

## 25. Amendment in the meaning & scope of 'supply' - Section 7 of CGST Act

<b>Amendment and Dhruva Comments</b>	<b>Amendment</b> <ul style="list-style-type: none"><li>Section 7(1) of CGST Act which explains the meaning of 'supply' is divided into four parts. The 4<sup>th</sup> part i.e. clause (d) states that supply includes activities to be treated as supply of goods or supply of services as referred in Schedule II of CGST Act.</li></ul>
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- The said clause (d) is omitted from Section 7(1) of CGST Act and a new sub-section i.e. Section 7(1A) is inserted to state that where certain activities or transactions constitute a supply in terms of Section 7(1), shall be treated either as a supply of goods or services as referred in Schedule II.

#### **Dhruva Comments**

- *Prior to the said amendment, any activity specified in Schedule II is regarded as a deemed supply even if it is not in the course or furtherance of business. However, due to such amendment, all activities which are specified in Schedule II would have to first qualify as a supply in terms of Section 7(1) of CGST Act.*
- *There may be instances where an assessee would have treated an activity/ transaction as a supply and discharged GST liability, although the same does not qualify as a 'supply' in light of the above amendment.*
- *It needs to be seen whether the Government would prescribe for refunds / adjustments in such cases, as the amendment is retrospective in nature.*

## **26. Amendment to Section 140 of CGST Act – Transitional credits**

### **Amendment and Dhruva Comments**

#### **Amendment**

- Amendment have been carried out in Section 140(1) giving reference of eligible duties to the term 'CENVAT Credit' along with amendment in Explanations 1 and 2 to Section 140 by linking it to sub-section (1) of Section 140 as well.
- While the amendment to Section 140(1) has been made effective retrospectively w.e.f. July 1, 2017, the amendments to the Explanations are not notified.

#### **Dhruva Comments**

- *By linking the Explanation 1 & 2 to Section 140(1), a doubt could arise as to whether credit of service tax would be allowed as a part of transition credit, as Explanation 1 which refers to 'eligible duties' does not cover Service tax.*
- *However, by not notifying the effective date for the amendments to the Explanations, it appears that the intention is not to deny the credit of Service tax. This also flows from a recent Circular issued by the Government in this regard which categorically states that credit of Service tax continues to be allowed.*
- *However, the issue of eligibility of credit of Krishi Kalyan Cess may still persist; although, in the past an advance ruling has been pronounced by Maharashtra AAR denying such credit of KKC which has also been upheld by the Appellate AAR.*



## ADDRESS

### Mumbai

1101, One IndiaBulls Centre,  
11th Floor, Tower 2B,  
841, Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400 013  
Tel: +91-22-6108 1000 / 1900

### Ahmedabad

B3, 3rd Floor, Safal Profitaire,  
Near Auda Garden,  
Prahladnagar, Corporate Road,  
Ahmedabad - 380 015  
Tel: +91-79-6134 3434

### Bengaluru

Prestige Terraces, 2nd Floor  
Union Street, Infantry Road,  
Bengaluru 560 001  
Tel: +91-80-4660 2500

### Delhi / NCR

101 & 102, 1st Floor, Tower 4B  
DLF Corporate Park  
M G Road, Gurgaon  
Haryana - 122 002  
Tel: +91-124-668 7000

### Pune

305, Pride Gateway,  
Near D-Mart, Baner,  
Pune - 411 045  
Tel: +91-20-6730 1000

### Kolkata

4<sup>th</sup> Floor, Unit No. 403,  
Camac Square,  
24 Camac Street, Kolkata,  
West Bengal – 700016,  
Tel: +91-33-6637 1000

### Singapore

Dhruva Advisors (Singapore) Pte. Ltd.  
20 Collyer Quay, #11-05  
Singapore 049319  
Tel: +65-9105 3645

### Dubai

WTS Dhruva Consultants  
U-Bora Tower 2,  
11th Floor, Office 1101  
Business Bay P.O. Box 127165  
Dubai, UAE  
Tel: + 971 56 900 5849

### Bahrain

WTS Dhruva Consultants  
Bahrain Financial Harbour,  
East Tower - Floor 23,  
Office 2301, Building 1398, Road 4626,  
Block 346. Manama, Kingdom of Bahrain  
Tel: 973 1663 1921

### New York

Dhruva Advisors USA, Inc.  
340 Madison Avenue, 19th Floor,  
New York,  
New York 10173 USA  
Tel: +1-212 220-9494

### Silicon Valley, USA

Dhruva Advisors USA, Inc.  
5201 Great America Parkway,  
Santa Clara, California 95054  
Tel: +1 408 930 5063

## KEY CONTACTS

### Dinesh Kanabar (Mumbai)

Chief Executive Officer  
dinesh.kanabar@dhruvaadvisors.com

### Ritesh Kanodia (Mumbai)

ritesh.kanodia@dhruvaadvisors.com

### Niraj Bagri (Mumbai)

niraj.bagri@dhruvaadvisors.com

### Ranjeet Mahtani (Mumbai)

Ranjeet.mahtani@dhruvaadvisors.com

### Amit Bhagat (Delhi/NCR)

Amit.bhagat@dhruvaadvisors.com



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