

## Important GST related regulatory updates and clarifications

### Procedure to deal with differences in GSTR3B and GSTR2A for FY 2017-18 and 2018-19:

- Maharashtra State Dept had allowed ITC (originally challenged on account of difference between GSTR3B and GSTR2A) if the concerned tax payer is able to furnish self-declaration (CA certificate in case tax amount is more than 2.5 Lakhs) from the concerned supplier certifying that the tax has been paid against such supply and the error in reporting such transaction in name of such concerned tax payer.
- Taking cue from Maharashtra GST, Central Government has come up with clarification to deal with differences between GSTR3B and GSTR2A for the financial years 2017-18 and 2018-19:

Scenarios	Accepted Clarifications
GSTR1 is not filed but GSTR3B is filed	<b>In case the tax difference is more than Rs 5 Lakhs:</b> registered person can produce a certificate for the concerned supplier from the CA/ CMA certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Such certificate must contain verifiable UDIN.
GSTR1 as well as GSTR3B is filed but reporting in GSTR1 is incorrect (either the invoice is not reported itself or has been reported as b2cs or with wrong GSTIN)	<b>In case the tax difference is less than Rs 5 Lakhs:</b> Claimant can produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.  In case of reporting supplier against wrong GSTINs, the proper officer can inform the jurisdictional officer of such GSTIN that ITC on such transactions is not available. However, pendency of action by such jurisdictional officer would not hinder the relief under this circular.

- This relief though is not available to those tax payers claiming ITC relating to FY 2017-18 in GSTR3B filed after due date of Sep 2018 GSTR3B but before due date of Mar 2019 GSTR3B if the suppliers have not reported relevant supplies against the GSTIN of claimant in GSTR1 filed for period of Mar 2019 or before.

**[Circular No. 183/15/2022-GST dt. 27-Dec-2022]**

### Computation of limitation in case of re-directed show cause notices:

CBIC has clarified positions in case of SCN issued originally in terms of Sec 74 of CGST Act, 2017 but then was held by appellate or higher authority as not sustainable u/s 74 and thereafter remanded to proper officer for re-computation in terms of Sec 73:

<b>Scenarios</b>	<b>Whether proceedings can be continued u/s 73?</b>
Original SCN u/s 74 <u>was issued</u> within time limit mandated u/s 73 (i.e. 2 years and 9 months from due date of filing of annual return). Now held unsustainable with re-direction to proper officer to continue determination as if notice is issued in terms of Sec 73. Whether proceedings can be continued?	Yes. Order to be passed within 2 years from date of re-direction.
Original SCN u/s 74 <u>was not issued</u> within time limit mandated u/s 73 (i.e. 2 years and 9 months from due date of filing of annual return). Now held unsustainable with re-direction to proper officer to continue determination as if notice is issued in terms of Sec 73. Whether proceedings can be continued?	No. Because time limit for issue of SCN in terms of Sec 73 has lapsed.
Original SCN u/s 74 issued for one financial year within time limit mandated u/s 73 but after the expiry of said due date for other financial years. Now held unsustainable with re-direction to proper officer to continue determination as if notice is issued in terms of Sec 73. Whether proceedings can be continued?	Yes in case of FY for which time limit u/s 73(2) has not lapsed.  No in case of financial years for which time limit u/s 73(2) has lapsed.

**[Circular No. 185/17/2022-GST dt. 27-Dec-2022]**

### Clarification on levy & ITC in case of transportation of goods within and outside India:

Services by way of transportation of goods to a place outside India while the supplier of such service and recipient are located in India:

Scenarios	Position
-What is the place of supply in above case?	Place of supply shall be the destination where goods are being transported to.
-Whether such supply is inter-state or intra-state?	Such supply shall be <b><i>inter-state supply</i></b> since place of supply is outside India (state code to be used by supplier for reporting is '96-Foreign Country') while the location of supplier is in India.
-Whether recipient of service is entitled to ITC?	<p>Sec 16 read with Sec 17 of CGST Act, 2017 do not restrict ITC even if the place of supply is outside India.</p> <p><i>"The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India."</i></p>

Through this circular, important doubts relating to entitlement to ITC have been resolved in favour of the tax payers.

**[Circular No. 184/16/2022-GST dt. 27th December 2022]**

**Clarification on deduction available u/s 15 of CGST Act, 2017 towards No Claim Bonus offered by Insurance companies to the insured:**

- The customer/insured procure insurance policy to indemnify themselves from any loss as identified in terms of the policy. Premium relating to such policy does not incentivize the policy holder to not claim the insurance. As such, the no claim bonus (NCB) as offered by insurance companies to its policy holders in case of such holder not claiming the insurance is not *consideration* charged by the policy holder and therefore such NCB is not a supply provided by the insured to the insurance company.
- Further, the terms of NCB are prescribed at the time insurance companies and the customer/insured enter into agreement. As such, the condition laid down in Sec 15 of CGST Act, 2017 prescribing pre-supply agreement on terms of discount is fulfilled and therefore, GST would be payable by insurance companies only on actual premium receipt after deduction of such NCB discount.

**[Circular No. 186/18/2022-GST dt. 27-Dec-2022]**

### Exemption from e-invoice generation available to whole of the entities specified:

- Exemptions have been provided to following entities from generation of e-invoice (implemented vide Notification No. 13/2020 dt. 21-Mar-2020):
  - Insurance company, banking company or a financial institution including a NBFC
  - Goods Transport Agency
  - Passenger transport service provider
  - Multiplex screeners exhibiting movies
- Exemption granted from generation of e-invoices is available for above entities as a whole and not with the core nature of supply. So even if for e.g. a banking company issues a tax invoice for sale of goods, it is still not required to generate tax invoice considering that exemption is to the entity and not a specific nature of supply.
- Threshold limit for applicability of generation of e-invoice still remains at Rs 10 Cr of aggregate turnover in any financial year from Jul 17 to last financial year.

**[Circular No. 186/18/2022-GST dt. 27-Dec-2022]**

### Relief to tax payers ('corporate debtors') under insolvency resolution:

- As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced **as a result of any appeal, revision or other proceedings** in respect of such government dues, then an intimation (**in Form DRC-25**) for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending.
- Tax payers undergoing resolution under the provisions of Insolvency and Bankruptcy Code have been under receipt of tax demands from Revenue Department even after the amount of tax due was reduced under the proceedings before NCLT which is the nodal authority for adjudicating cases under IBC on the grounds that proceedings before NCLT are not covered by Sec 84 of CGST Act, 2017 to which allows the Commissioner to intimate the tax payer about reduction in demand basis the outcome of *proceedings*.
- CBIC has now clarified that the term 'other proceedings' used in Sec 84 of CGST Act, 2017 includes proceedings before the NCLT and accordingly any reduction in tax dues as approved by under the resolution process would have to be communicated by the Commissioner to the tax payer in Form DRC-25.

**[Circular No. 187/19/2022-GST dt. 27-Dec-2022]**

### Refund claim by unregistered tax payers:

- Often, flat buyers face the challenge of non-completion or delayed completion of project they have invested their money in. In these situations, customer is left with nothing but to terminate the purchase agreement. This termination takes often at a time way after the agreement has been executed and therefore the time limit for issue of taxable credit note is lapsed owing to which developer only remits (refunds) the portion of base value. This results in such customer bearing the burden of tax. Similar situation exists in insurance industry. To reduce this undue burden, Government has come with suitable

changes to CGST Rules to enable unregistered persons to claim refund of such taxes borne by them.

- Following is the brief of the procedure:
  - Such unregistered person to apply for temporary registration of the state or UT where the supplier, in respect of whose invoice refund is to be claimed, is registered. If the supplier(s) is (are) located in more than one state, then that many number of temporary registrations are to be obtained by such unregistered tax payer.
  - Refund application (of min Rs. 1,000/-) to be made in RFD-01 under the new category 'Refund claim by unregistered persons' separately for each supplier against whose invoice refund is to be claimed.
  - Details to be uploaded in Statement 8 including tax invoice details, proof of payment to developer, copy of agreement, termination deed, proof of payment received against cancellation.
  - A certificate by the developer declaring that it has paid tax on such invoices and has not in any manner adjusted such taxes by way of refund or issue of credit note. Once this certificate is provided, no CA certificate is needed for refund application in such scenario.
  - **Note that separate application would have to be filed for each supplier against whose invoices refund is to be claimed.**
  - Refund can be applied for within two years from the date of termination/ cancellation agreement.
  - A completely guided go through of application for refund is available at [https://tutorial.gst.gov.in/userguide/refund/index.htm#t=Manual\\_RFD01\\_Unregistered\\_Taxpayer.htm](https://tutorial.gst.gov.in/userguide/refund/index.htm#t=Manual_RFD01_Unregistered_Taxpayer.htm)

**[Circular No. 188/20/2022-GST dt. 27-Dec-2022 read with Notification 26/2022 dt. 26-Dec-2022]**

#### Procedure to deal with differences in liability reported in GSTR-1 vis-à-vis GSTR-3B:

- Rule 88C has been inserted, along with suitable amendments to other rules, to prescribe the procedure to be followed in case of differences in outward liability reported in GSTR-1 vis-à-vis GSTR-3B.
- Rule 88C allows issue of intimations by proper officers in Part A of Form DRC-01B communicated differences in tax liability disclosed in GSTR1 while that actually paid in GSTR3B (if above certain prescribed tolerance).
- Such tax payers would have to either deposit the differential tax money or provide satisfactory clarification, in Part B of Form DRC-01B, WITHIN 7 DAYS from date of intimation, failing which proper officer can directly initiate recovery proceedings under Sec 79 of CGST Act, 2017.

**[Notification 26/2022 dt. 26-Dec-2022]**

### Clarifications on reversal of ITC in different scenarios:

- Where the taxpayer fails to pay to the supplier, the amount towards the value of such supply whether wholly or partly along with the tax payable thereon, within the time limit, shall pay or reverse an amount equal to the ITC availed in respect of such supply proportionate to the amount not paid to the supplier along with interest. (*Effective from 1 October 2022*)
- Insertion of new rule for reversal of ITC in case of non-payment of tax by the supplier which states that where—
  - i. the supplier has furnished the details of invoice/debit note in the GSTR-1
  - ii. but has failed to file the GSTR-3B and pay taxes for the said tax period up to 30<sup>th</sup> September of the following the end of the financial year
  - iii. and ITC has been availed by the recipient in respect of such Invoice or Debit note,

then, in such cases, the recipient is liable to reverse such ITC availed in GSTR-3B furnished on or before 30<sup>th</sup> November following the end of such financial year.

- Further, where the recipient fails to reverse the credit mentioned supra in GSTR-3B furnished on or before 30<sup>th</sup> November following the end of such financial year, such ITC availed shall be payable by the recipient along with interest applicable u/s 50.
- Such credit may be re-availed by the recipient pursuant to filing of the GSTR-3B for the tax period by the supplier.

### **[Notification 26/2022 dt. 26-Dec-2022]**

### Changes in GST registration modalities:

- In addition to the validation of the PAN from the CBDT database, the PAN shall also be verified through separate one-time passwords sent to the mobile number and e-mail address linked to the Permanent Account Number going forward in respect of all the new registrations.
- Additional Aadhaar authentication procedure has been listed down for the State of Gujarat whereby the Aadhaar of the individual/proprietor shall be verified with his biometrics and his photograph. In case of non-individual applicant, the original copy of the documents uploaded while applying for registration shall be verified. These additional verifications shall be conducted based on data analysis and risk parameters at the notified facilitation centers.
- The registration shall be deemed to be complete post successful verification of the Aadhaar as mentioned above.
- A taxpayer who is no longer required to deduct tax at source or collect at source may make a written request to the proper officer for cancellation of his registration.

### **[Notification 26/2022 dt. 26-Dec-2022]**

### Clarification on renting of residential dwelling to proprietor:

- On recommendation of GST council, Government has inserted explanation in exemption notification relating to renting of residential dwelling for use as residence by a proprietor.
- Exemption entry now specifically includes exemption on renting of residential dwelling to a proprietor provided:
  - a. Proprietor rents such dwelling in his personal capacity for use as his own residence
  - b. such renting is on proprietor's own account and not that of the proprietorship concern.

**[Notification 15/2022 dt. 30-Dec-2022]**

### Important rate changes w.e.f. 01-Jan-2023:

- In order to reduce dependence on imported crude, Government has reduced rates on ethyl alcohol from 18% to 5% when supplied to petroleum refineries for blending with motor spirit (petrol).
- To check the increase in prices of cattle feed, Government has reduced GST on husk of pulses (*chilka, churi, khanda*) from 5% to NIL.
- GST rate on pencil sharpeners has been increased from 12% to 18%.
- Exempted until now, the services by way of access to roads/ bridges on payment of **annuity** are taxable at 18% w.e.f. 01-Jan-2023.
- While providing clarity, entry in Schedule II (list of goods taxable @ 12%) listing fruit pulp or fruit juice based drinks has been changed to specifically exclude *carbonated beverages of fruit drinks or with fruit juice*, which are taxed at 28%.
- Supply of Mentha Arvensis (*pudina*) is now liable to tax under RCM when sold by any unregistered person to registered person.

**[Notification 12/2022 to Notification 14/2022 dt. 30-Dec-2022]**

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Above analysis is presented for easy understanding of the reader. Before business specific application is made on account of above changes, it is advisable to go for legal consultation to ensure all aspects are covered. We are not by means of this material, rendering any professional advisory or services or soliciting work.

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