

# GST Newsletter

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## Preface:

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GST being the reform of the era is continuing to evolve through various amendments, circulars and notifications. The focus now has begun to shift towards enforcement actions, hassle-free refunds, simplified GST Returns.

Tax authorities have now begun initiating procedures such as cancellation of registration, restrictions on generation of e-way bills on failure to file returns, thereby ensuring compliance.

In this issue we have compiled the key GST Recommendations made by the GST Council in the 31<sup>st</sup> Meeting held on 22<sup>nd</sup> December 2018 and the corresponding notifications issued by CBIC.

It contains some of the important notifications with the revised forms for Refund, Annual Return, GST Audit, Extension of due dates for availing Input tax credit for FY 17-18.

**1. Extension of due date of filing TDS Return - GSTR 7 vide Notification No.66/2018 - CGST:**

Time Limit for filing TDS Return FORM GSTR-7 under section 51 of the CGST Act for the months of October, 2018 to December, 2018 has been extended till 31st January 2019.

It is to be noted that all deductions made on or after 1st October, 2018 but before the date of registration may be included in the first return to be furnished after obtaining registration.

**2. Window for Completion of Migration process vide Notification No.67/2018 to Notification No.72/2018:**

One more window for completion of migration process is being allowed. The due date for the taxpayers who did not file the complete FORM GST REG-26 but received only a Provisional ID (PID) till 31.12.2017 for furnishing the requisite details to the jurisdictional nodal officer shall be extended till 31.01.2019.

Also, the due date for furnishing FORM GSTR-3B and FORM GSTR-1 for the period July, 2017 to February, 2019/quarters July, 2017 to December, 2018 by such taxpayers shall be extended till 31.03.2019.

**3. Relaxing TDS provisions vide Notification No. 73/2018 – CGST :**

The following Proviso has been inserted in Notification 50/2018 - CGST:

Provided also that nothing in this notification shall apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the said Act.

Thus no TDS is required to be deducted for transactions between a department or establishment of the Central Government or State Government; or local authority; or Governmental agencies; or PSUs

**4. Amendment to CGST Rules vide Notification No. 74/2018 – CGST:**

Changes relating to Reconciliation Statement:

- Item 5E: Credit notes issued after the end of the financial year but reflected in annual return
  - (+) sign replaced by (-)
  - There was an error in the sign in the form which has been rectified.

- Item 5J: Credit notes accounted for in the audited Annual Financial Statement but are not permissible under GST:
  - (-) sign replaced by (+)
  - There was an error in the sign in the form which has been rectified.
- Verification by taxpayer who would be uploading form GSTR 9C has now been included.
  - Earlier only attestation from auditor was provided in Part B of GSTR 9C.
  - It is the responsibility of the tax payer to get the audit done by an auditor and preparation of reconciliation.
  - Hence a verification clause has now been inserted in form GSTR 9C.

Changes relating to Annual Return:

- Amendment of headings
  - Earlier the headings in the form FORM GSTR-9 & FORM GSTR-9A would be in respect of supplies etc. was 'as declared in returns filed during the year'.
  - Because of the heading only information already given in the monthly returns could be given and no new liability could be furnished.
  - The heading has now been changed to "made during the financial year".
- HSN code may be declared only for those inward supplies whose value independently accounts for 10% or more of the total value of inward supplies.
- Towards the end of the annual return, taxpayers have been given an option to pay any additional liability declared in this form, through FORM DRC-03. Taxpayers shall select Annual Return in the drop down provided in FORM DRC-03. It may be noted that such liability can be paid through electronic cash ledger only.
- Input tax credit on all invoices pertaining to previous FY would be auto populated in Table 8A of GSTR-9.
- Item 5C - Tax amounts for Outward supplies liable to RCM now omitted.
- Item 5F - Non-GST Supply now includes "No Supply"
- Item 8E- "ITC Available but not availed" now includes amounts not reflecting in GSTR 2A

- Item 8F: "ITC available but ineligible" now includes amounts not reflecting in GSTR 2A

#### Changes relating to refunds:

The following types of refunds shall also be made available through FORM GST RFD 01A:

- Refund on account of Assessment/Provisional Assessment/Appeal/Any Other Order
- Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice-versa.
- Excess payment of Tax
- Any other refund.

#### Clarification regarding TDS/TCS Registration:

A registered person liable to deduct TDS/TCS can now get himself registered in the State or UT in which he does not have any physical presence by providing following details in the given Parts of FORM GST REG-07:

- Part A- name of the state or UT where the person intends to take the registration.
- Part B- name of the state or UT where such registered person has its physical presence.

#### Changes relating to ITC - 04:

- The words "or sent from one job worker to another" have been omitted in Rule 45(3) of CGST Rules 2017.
- Thus no information of goods sent from one job worker to another job worker for multiple processes is required to be furnished in ITC - 04.

#### Non-generation of e-way bill due to non-filing of GST returns

- Rule 138E restricts furnishing of Part A in Form GST EWB-01 in case the registered person, being either a recipient or supplier, has not filed his returns:
  - i) being a person paying tax u/s 10, for two consecutive tax periods; or
  - ii) being a person other than a person registered u/s 10 for a consecutive period of two months.

**5. Waiver of late fees vide Notification No. 75/2018 to Notification No. 77/2018 - CGST:**

- The late fees for delay in filing of GSTR 3B, GSTR 1, GSTR 4 is Rs. 50 per day for each form (Rs. 20 per day for each form in case of nil liability).
- Late fee is completely waived for all taxpayers in case form GSTR-1, form GSTR-3B & form GSTR 4 for the months / quarters July, 2017 to September, 2018 are furnished after 22.12.2018 but on or before 31.03.2019.
- However there is no waiver / cash back for those who already filed before 22.12.2018 after payment of late fees.

**6. Due date to file ITC-04 Extended vide Notification No.78/2018 - CGST:**

Due date to file Form ITC-04 in respect of goods dispatched to or received from a job worker for the period July 2017 to December 2018 has been extended to 31<sup>st</sup> March 2019.

**7. Changes in rate of GST on certain goods vide Notification No. 24/2018 – CGST Rate and Notification No. 25/2018 – CGST Rate:**

Changes in rates have been effected from 1<sup>st</sup> January 2019 in respect of certain goods. The HSN wise details are given in the above said notifications.

**8. Changes in rate of GST on certain services vide Notification No. 27/2018 – CGST Rate and Notification No. 28/2018 – CGST Rate:**

Changes in rates have been effected from 1<sup>st</sup> January 2019 in respect of certain service. The HSN wise details are given in the above said notifications.

**9. Amendment to reverse charge mechanism vide Notification No. 29/2018 – CGST Rate:**

- a. Services provided by GTA by way of transport of goods in a goods carriage by road to Government departments/local authorities which have taken registration only for the purpose of deducting tax under Section 51 shall be excluded from payment of tax under RCM as the same has been exempted by notification 28/2018- CGST Rate.

b. New entries under reverse charge:

- Security services (supply of security personnel) provided by any person other than a body corporate to a registered person shall attract RCM except where service provided to:
  - Government Departments, Local Authorities, Government Agencies which have solely taken registration for the purpose of TDS under Section 51.
  - Entities registered under Composition scheme.
- Services provided by business facilitator (BF) to a banking company located in taxable territory
- Services provided by an agent of business correspondent (BC) to business correspondent (BC) located in the taxable territory.

**10. Extension of time limit for availing ITC relating to such invoices issued during the FY 2017-18 vide Removal of difficulties order No. 2/2018 - CGST:**

- As per Section 16(4) of the CGST Act, ITC for FY 2017-2018 can be taken until the due date of filing of return of September 2018.
- The above time limit has been extended till the due date of furnishing the return for the month of March 2019 for FY 2017-18.
- Condition: the details of the invoices/debit notes have been uploaded by the supplier till the due date for furnishing the details for the month of March, 2019 (i.e. it shall be reflected in the GSTR 2A until the month of March 2019).

**11. Extension in time limit for amendments in form GSTR 1 vide Removal of difficulties order No. 2/2018 - CGST:**

- As per Section 39(9) of the CGST Act, no rectification of errors or omission in GSTR 1 for FY 2017-18 can be taken until the due date of filing of return of September 2018 or actual date of furnishing Annual Return whichever is earlier.
- The above due date for rectification of error or omission in respect of GSTR 1 for FY 17-18 has been extended till the due date of filing the return for the month of March 2019.

**12. Extension of due date for furnishing Annual Return and Reconciliation Statement vide Removal of difficulties order No. 3/2018- CGST:**

- Every registered person is required to furnish Annual Return as per Section 44(1) of the CGST Act before 31st December 2018.
- Every registered person whose turnover exceeds Rs. 2 Crores is required to furnish a reconciliation statement along with Annual Return as per Section 44(2) of the CGST Act before 31st December 2018.
- The above due dates were extended to 31st March 2019 by Removal of difficulties Order 1/2018 - Central Tax. It has now been further extended to 30th June 2019.

**13. Extension of due date for furnishing form GSTR 8 vide Removal of difficulties order No. 4/2018- CGST:**

- E Commerce Operators are required to furnish form GSTR 8 containing the details of outward supplies of goods or services or both affected through it, including the supplies of goods or services or both returned through it. The due date for the same is 10th of subsequent month.
- The due date for furnishing FORM GSTR-8 by e-commerce operators for the months of October, November and December, 2018 has been extended till 31.01.2019.

**14. Clarifications relating to refund vide Circular No. 79/2018 - CGST:**

Online submission of supporting documents:

- Due to the non-availability of the complete electronic refund module, a manual procedure was prescribed vide Circular No. 17/17/2017-GST dated 15.11.2017 and Circular No. 24/24/2017-GST dated 21.12.2017.
- Now all the supporting documents/invoices in relation to a claim for refund in FORM GST RFD-01A shall be uploaded electronically on the common portal at the time of filing of the refund application itself, thereby the tax payer is not required to physically visit a tax office for submission of a refund application.
- However a tax payer may opt to submit documents physically. A tax payer who has not been allocated to state or centre will be required to submit physically.

Clarification on calculation of refund under inverted rate structure:

- In case of inverted rate structure (i.e. where rate of inputs is less than rate of output) refund of accumulated ITC was allowed.
- However where there was multiple rate of taxes on inputs refunds were disallowed by department for inputs which fell on the higher rate.
- It has been now clarified that once a taxable person has been held to be eligible for refund, the “net ITC” in the formula shall mean to include ITC on all inputs in the period.
- Further while calculating “Net ITC” ITC on capital goods shall not be included as the same if not falling in the definition of inputs.

Refund on all inputs:

It is noticed that while calculating “Net ITC” department are denying refund on the items like the following as the same are not directly consumed:

- stores and spares,
- packing materials,
- materials purchased for machinery repairs,
- printing and stationery items,

It is clarified that there is no specific restriction on the availment of such ITC anywhere in the GST Act. The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act.

Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

Refund of accumulated ITC of Compensation Cess:

- It is clarified that refund of compensation cess paid on inputs used for making zero rated supplies under LUT is allowable.
- Refund of compensation cess paid on purchase of coal used for captive generation of electricity which is in turn used for manufacture of goods exported under LUT is also allowed.



Clarification on the timing of ITC Claimed:

- It is possible that supply may be received in a month however ITC is availed in subsequent month.
- It was noticed that field officers were denying refund of invoices of earlier period claimed in a subsequent month.
- It has been clarified that the same is incorrect and refund should be allowed in the month in which the ITC is taken irrespective of the date of invoice.

**15. Clarifications relating to Valuation vide Circular No. 76/2018 - CGST:**

It has been clarified that the value of supply as per section 15 includes any tax (other than GST) hence the taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act.

**16. Determination of Place of Supply of Services in certain cases vide Notification 4/2018 - IGST:**

In relation to Immovable property:

Rule 4 has been inserted for providing the place of supply of services in relation to certain services mentioned in Section 12(3)(a) to Section 12(3)(d) provided:

- such services are attributable to different States, and
- where the contract / agreement between the supplier of services and recipient of services does not specify the allocation of value for each State

Manner of determination of POS:

Particulars	POS
Services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called (except cases where such property is a single property located in two or more contiguous States or Union territories or both) and services ancillary to such services, the supply of services	Determined in proportion to the number of nights stayed in such property.

<p>Services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc., and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in two or more contiguous States or Union territories or both, and services ancillary to such services, the supply of services</p>	<p>Determined in proportion to the area of the immovable property lying in each State or Union territory.</p>
<p>Services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories</p>	<p>Determined in proportion to the time spent by the boat or vessel in each such State or Union territory, which shall be determined on the basis of a declaration made to the effect by the service provider.</p>

The above provisions would, mutatis mutandis, applicable where either the location of supplier of services or location of recipient of services is outside India (Rule 8 of the IGST Rules, 2017, as inserted in the said notification) but the property is located in more than one state in India.

In relation to Events:

Rule 5 has been inserted for providing the place of supply of services in relation to certain services mentioned in Section 12(7) provided:

- such services are attributable to different States, and
- where the contract / agreement between the supplier of services and recipient of services does not specify the allocation of value for each State

Manner of determination of POS:

POS shall be determined based on generally accepted accounting principles.

The above provisions would, mutatis mutandis, applicable where either the location of supplier of services or location of recipient of services is outside India (Rule 9 of the IGST Rules, 2017, as inserted in the said notification) but the property is located in more than on State in India

In relation to Performance based services:

In respect of performance based services provided subsection (7) of section 13, if

- such services are attributable to different States, and
- where the contract / agreement between the supplier of services and recipient of services does not specify the allocation of value for each State

POS shall be determined in the following manner:

<u>Particulars</u>	<u>POS</u>
Supply on same goods	Determined by equally dividing the value of the service in each of the States and Union territories where the service is performed
Supply on different goods	Determined in ratio of the value of the service performed in each State or Union territory
Services supplied to individuals	Generally accepted accounting principles.

**Disclaimer:**

This document is prepared by A. K. Lunawath & Associates solely for clients and other chartered accountants to provide updates on important amendments in GST. The information is exclusively for educational purposes, professional advice shall be taken before taking any decision based on this document.

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