

GST Update

Weekly Update
06.07.2019

Background

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 29.06.2019. It supplements the earlier GST Updates.
- This presentation is based on CGST Act/Rules/ Notifications. Similar parallel provisions in State Laws may be referred to as required

Notifications and Circulars

- Budget for 2019-20 announced
- Proposed amendment to CGST Act, 2017 and IGST Act, 2017 tabled in the Finance Bill, 2019
- Four CBIC Press Release issued

Proposed Amendments to CGST Act, 2017 and IGST Act, 2017 (Section 91 to 111 of Finance Bill, 2019)

Proposed Amendment to CGST Act, 2017



- **Section 2(4):** ‘Adjudicating Authority’ amended to exclude ‘the National Appellate Authority for Advance Ruling’
- **Section 10:** Amendment to introduce composition scheme for service providers (Up to Rs. 50 lacs)
- **Section 22:** Increase in threshold limit for registration in respect of goods to Rs. 40 lacs
- **Section 25:** Aadhaar authentication for new and existing registrants
- **Section 31A:** Specified suppliers to mandatorily give the option of electronic payment to the recipients of supply of goods or services or both made by them
- **Section 39:** Provide for new return system and allow composition taxpayers to furnish annual return along with quarterly payment

Proposed Amendment to CGST Act, 2017 (Contd)

- **Section 44:** Empowers the “Commissioner or Joint Secretary posted in the Board” to extend the due date furnishing Annual Return prescribed (FORM GSTR9/9A) and reconciliation statement (FORM GSTR-9C)
- **Section 49:** Provide for transfer of an amount from one head to another head in the electronic cash ledger
- Such transfer shall be deemed to be a refund from the electronic cash ledger under this Act. Any amount that has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger.
- **Section 50:** Charging interest only on the net cash tax liability, except in proceedings under section 73 or 74
- Interest on late payment of tax shall be calculated on net cash liability (gross liability less credit available), and not gross tax liability

Proposed Amendment to CGST Act, 2017 (Contd)



- **Section 52(4&5):** Empowers the “Commissioner or Joint Secretary posted in the Board” to extend due date of monthly/ annual statement of TCS
- **Section 53A:** Provides for consequential transfer of amount between Centre and States, due to section 49 (Transfer of an amount from one head to another head in the electronic cash ledger
- **Section 54(8A):** Provides that the Central Govt may disburse refund amount to taxpayers in respect of refund of State taxes i.e disbursement of refund by single authority

Proposed Amendment to CGST Act, 2017 (Contd)



- **Section 95(f):** To define the “National Appellate Authority (NAA)” for Advance Ruling
- **Section 101A, B & C:** To introduce provisions relating to ‘National Appellate Authority (NAA) for Advance Ruling’
- **Section 102:** Power to NAA to rectify any error apparent on the face of the record
- **Section 103:** AR pronounced by the NAA shall be binding PAN wise
- **Section 104:** AR pronounced by NAA to be void in certain cases
- **Section 105:** NAA to have powers of Civil Court under the Code of Civil Procedure, 1908
- **Section 106:** NAA to regulate its own procedure

Proposed Amendment to CGST Act, 2017 (Contd)



- **Section 168:** Commissioner or Joint Secretary shall exercise the powers specified in respect of section 44(1) and section 52(4&5)
- **Section 171:** To empower National Anti-profiteering Authority to impose penalty equivalent to 10% of the profiteered amount. However, no penalty shall be levied if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority

Proposed Amendment to IGST Act, 2017

- **Section 17A:** Provisions for consequential transfer of amount between Centre and States, in view of inter-operability of amounts in different heads of cash ledger under section 49 of CGST Act)

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019

- **Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019**
- Dispute Resolution cum Amnesty Scheme for legacy cases of Central Excise, Service Tax and Cess.
- *GST has just completed two years. An area that concerns me is that we have huge pending litigations from pre-GST regime. More than Rs. 3.75 lakh crore is blocked in litigations in service tax and excise. There is a need to unload this baggage and allow business to move on. I, therefore, propose, a Legacy Dispute Resolution Scheme that will allow quick closure of these litigations. I would urge the trade and business to avail this opportunity and be free from legacy litigations.*

Nirmala Sitharaman (Minister of Finance) Budget Speech

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (Contd)

- A dispute resolution cum amnesty scheme for resolution and settlement of legacy cases.
 - covers past disputes of taxes which have got subsumed in GST namely Central Excise, Service Tax and Cesses
- The scheme to be available from a date to be notified.
- **Taxes/Cesses covered under the Scheme**
- The Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or Chapter V of the Finance Act, 1994 and the rules made there under and
- Sixteen other Acts covered

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (Contd)

- Benefits:
 - Relief from payment of tax dues to the extent of 50% to 70% of the tax dues depending on the amount of tax dues involved.
 - Relief from payment of interest and penalty
 - Person discharged not be liable for prosecution

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (Contd)

Details	Amount (In Rs)	Relief
Tax dues relatable to SCN or appeal arising out of such SCN which is Pending as on 30.06.2019 and	< 50 lakhs	70% of the Tax dues
----- Do-----	> 50 lakhs	50% of the Tax dues
Tax dues relatable to SCN for late fee or penalty only and the amount of duty has been paid or is nil	-	Entire amount of late fee or penalty

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (Contd)

Details	Amount (In Rs)	Relief
Tax Dues are relatable to amount in arrears	< 50 lakhs	60% of the Tax dues
	> 50 lakhs	40% of the Tax dues
Tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before 30 th June	< 50 lakhs	70% of tax dues
	> 50 lakhs	50% of tax dues
Tax dues are on account of voluntary disclosure by the declarant		No relief

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (Contd)

- All persons shall be eligible to make a declaration under this scheme except-
 - Where appeal filed before the appellate forum AND final hearing has taken place on or before 30.06.2019
 - Where SCN has been issued AND final hearing has taken place on or before 30.06.2019
 - Who have been convicted for any offence under any provision for the matter for which he intends to file a declaration
 - Who have been subjected to any enquiry or investigation or audit AND amount of duty involved has not been quantified on or before 30.06.2019

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (Contd)

- All persons shall be eligible to make a declaration under this scheme except-
 - Who have been issued a show cause notice for an erroneous refund or refund
 - A person making a voluntary disclosure
 - after being subjected to any enquiry or investigation or audit
 - having filed a return wherein he has indicated an amount of duty as payable, but has not paid it
 - who have filed an application in the Settlement Commission
 - seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944

Customs Exemptions (IGST)

- **IGST and Compensation Cess** – exempted on temporary importation of private road vehicles under the Customs Convention on Temporary Importation of private road vehicles (Carnet de passage-en-douane) with retrospective effect from 1st July, 2017 to 31st December, 2018
- Original Notification no. 296/76 dated 02.08.1976
- From 1st January, 2019, it was already exempted vide Notification no. 86/2018 dated 31st December, 2018

- **Retrospective Exemption of Uranium Ore Concentrate**
- Notification No. 2/2017-Central Tax (Rate) dated the 28th June, 2017, Notification No. 2/2017-Integrated Tax (Rate) dated the 28th June, 2017 and Notification No. 2/2017 -Union Territory Tax (Rate) dated the 28th June, 2017 is being amended retrospectively so as to exempt “Uranium Ore Concentrate” from the levy of Central Tax from 1st July, 2017 to 14th November, 2017

Clarification regarding Annual Returns and Reconciliation Statement

- **CBIC Press release dated 3rd July, 2019**
- **Payment of any unpaid tax:** Section 73 of the CGST Act provides a unique opportunity of self – correction to all taxpayers - before the service of a notice by any tax authority, by paying the amount of tax with interest. In such cases, no penalty shall be leviable on such tax payer.
- Therefore, in cases where some information has not been furnished in the statement of outward supplies in FORM GSTR-1 or in the regular returns in FORM GSTR-3B, such taxpayers may pay the tax with interest through FORM GST DRC-03 at any time. In fact, the annual return provides an additional opportunity for such taxpayers to declare the summary of supply against which payment of tax is made.

Clarification regarding Annual Returns and Reconciliation Statement (Contd)

- **Primary data source for declaration in annual return:** Ideally, information in FORM GSTR-1, FORM GSTR-3B and books of accounts should be synchronous and the values should match across different forms and the books of accounts. If the same does not match, there can be broadly two scenarios, either tax was not paid to the Government or tax was paid in excess. In the first case, the same shall be declared in the annual return and tax should be paid and in the latter all information may be declared in the annual return and refund (if eligible) may be applied through FORM GST RFD-01A. Further, no input tax credit can be reversed or availed through the annual return. If taxpayers find themselves liable for reversing any input tax credit, they may do the same through FORM GST DRC-03 separately.

- **Premise of Table 8D of Annual Return:** The input tax credit which is declared / computed in Table 8D is basically credit that was available to a taxpayer in his FORM GSTR-2A but was not availed by him between July 2017 to March 2019. The deadline has already passed and the taxpayer cannot avail such credit now. There is no question of lapsing of any such credit, since this credit never entered the electronic credit ledger of any taxpayer. Therefore, taxpayers need not be concerned about the values reflected in this table.
- Figures in Table 8A of FORM GSTR-9 are auto-populated only for those FORM GSTR-1 which were furnished by the corresponding suppliers by the due date. Table 8A of the annual returns is autopopulated from FORM GSTR-2A as on 1st May, 2019.

Clarification regarding Annual Returns and Reconciliation Statement (Contd)

- **Premise of Table 8J of Annual Return:** In the press release on annual return issued earlier on 4th June 2019, it has already been clarified that all credit of IGST paid at the time of imports between July 2017 to March 2019 may be declared in Table 6E. If the same is done properly by a taxpayer, then Table 8I and 8J shall contain information on credit which was available to the taxpayer and the taxpayer chose not to avail the same. The deadline has already passed and the taxpayer cannot avail such credit now. There is no question of lapsing of any such credit, since this credit never entered the electronic credit ledger of any taxpayer. Therefore, taxpayers need not be concerned about the values reflected in this table. This is information that the Government needs for settlement purposes.

Clarification regarding Annual Returns and Reconciliation Statement (Contd)

- **Difficulty in reporting of information not reported in regular returns:** There have been a number of representations regarding non-availability of information in Table 16A or 18 of Annual return in FORM GSTR-9. It has been observed that smaller taxpayers are facing a lot of challenge in reporting information that was not being explicitly reported in their regular statement/returns (FORM GSTR-1 and FORM GSTR-3B). Therefore, taxpayers are advised to declare all such data / details (which are not part of their regular statement/returns) to the best of their knowledge and records. This data is only for information purposes and reasonable/explainable variations in the information reported in these tables will not be viewed adversely.

Clarification regarding Annual Returns and Reconciliation Statement (Contd)

- **Information in Table 5D (Exempted), Table 5E (Nil Rated) and Table 5F (Non-GST Supply):** There appears to be some confusion over what values are to be entered in Table 5D, 5E and 5F of FORM GSTR-9. Since, there is some overlap between supplies that are classifiable as exempted and nil rated and since there is no tax payable on such supplies, if there is a reasonable/explainable overlap of information reported across these tables, such overlap will not be viewed adversely. The other concern raised by taxpayers is the inclusion of no supply in the category of Non-GST supplies in Table 5F. For the purposes of reporting, non-GST supplies includes supply of alcoholic liquor for human consumption, motor spirit (commonly known as petrol), high speed diesel, aviation turbine fuel, petroleum crude and natural gas and transactions specified in Schedule III of the CGST Act

Clarification regarding Annual Returns and Reconciliation Statement (Contd)

- **Reverse charge in respect of Financial Year 2017-18 paid during Financial Year 2018- 19:** It may be noted that since the payment was made during FY 2018-19, the input tax credit on such payment of tax would have been availed in FY 2018-19 only. Therefore, such details will not be declared in the annual return for the FY 2017-18 and will be declared in the annual return for FY 2018-19. If there are any variations in the calculation of turnover on account of this adjustment, the same may be reported with reasons in the reconciliation statement (FORM GSTR-9C).
- **Role of chartered accountant or a cost accountant in certifying reconciliation statement:** With respect to the reconciliation statement, their role is limited to reconciling the values declared in annual return (FORM GSTR-9) with the audited annual accounts of the taxpayer.

Clarification regarding Annual Returns and Reconciliation Statement (Contd)

- **Turnover for eligibility of filing of reconciliation statement:** The aggregate turnover i.e. the turnover of all the registrations having the same PAN is to be used for determining the requirement of filing of reconciliation statement. The aggregate turnover for this purpose shall be reckoned for the period July, 2017 to March, 2018.
- **Duplication of information in Table 6B and 6H:** The information declared in Table 6H is exclusive of Table 6B. Therefore, information of such input tax credit is to be declared in one of the rows only.

Clarification regarding Annual Returns and Reconciliation Statement (Contd)

- **Treatment of Credit Notes / Debit Notes issued during FY 2018-19 for FY 2017-18:** No credit note which has a tax implication can be issued after the month of September 2018 for any supply pertaining to FY 2017-18; a financial/commercial credit note can, however, be issued. If the credit or debit note for any supply was issued and declared in returns of FY 2018-19 and the provision for the same has been made in the books of accounts for FY 2017-18, the same shall be declared in Pt. V of the annual return. Many taxpayers have also represented that there is no provision in Pt. II of the reconciliation statement for adjustment in turnover in lieu of debit notes issued during FY 2018-19 although provision for the same was made in the books of accounts for FY 2017-18. In such cases, they may adjust the same in Table 50 of the reconciliation statement in FORM GSTR-9C.

Clarification regarding Annual Returns and Reconciliation Statement (Contd)

- **Reconciliation of input tax credit availed on expenses:** Table 14 of the reconciliation statement calls for reconciliation of input tax credit availed on expenses with input tax credit declared in the annual return. It may be noted that only those expenses are to be reconciled where input tax credit has been availed. Further, the list of expenses given in Table 14 is a representative list of heads under which input tax credit may have been availed. The taxpayer has the option to add any head of expenses.

Last date for intimation for composition scheme for services

- **CBIC Press release dated 4th July, 2019**
- A corrigendum dated 01.07.2019 to Circular No. 97/16/2019-GST
- The last date for registered persons for filing the intimation in FORM GST CMP-02 for availing the benefit of the alternate composition scheme (Suppliers of services or mixed suppliers, who were not eligible for the primary composition scheme and whose annual turnover in the preceding financial year did not exceed Rs. 50 lakh)
- Extended to 31.07.2019



GST Legal Updates

GSTR 3B is not a statutory return - Press Release dated 18.10.18 set aside

Case of AAP AND COMPANY Vs UOI reported in 2019-TIOL-1422-HC-AHM-GST

Facts:

Writ-application has been filed seeking quashing and setting aside of the press release dated 18th October 2018 to the extent that its para 3 purports to clarify that the last date for availing the input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of the return in Form GSTR-3B for the month of September 2018.

As per the above clarification, a taxpayer will not be able to claim the input tax credit for the period from July 2017 to March 2018 after filing of the return in Form GSTR-3B for the month of September 2018.

It disentitles a taxpayer to claim the input tax credit for the aforesaid period which could not be taken on account of any error or omission.

GSTR 3B is not a statutory return - Press Release dated 18.10.18 set aside

Facts: (Contd....)

It is submitted that the aforesaid clarification is not in consonance with Section 16(4) of the CGST Act/GGST Act which provides for the last date for taking the input tax credit. It is submitted that the last date of taking the input tax credit should be due date of filing of return in Form GSTR-3 or annual return whichever is earlier.

Section 16(4) of the CGST Act/GGST Act provides that the last date for taking the input tax credit in respect of any invoice or debit note pertaining to a financial year is the due date of furnishing of the return under Section 39 for the month of September following the end of the financial year or furnishing of the relevant annual return, whichever is earlier.

Question to be answered

Whether the return in Form GSTR-3B is a return required to be filed under Section 39 of the CGST Act/GGST Act; whether the aforesaid press release is valid and in consonance with Section 16(4) of the CGST Act/GGST Act only if Form GSTR-3B is a return required to be filed under Section 39 of the CGST Act/GGST Act.

The Hon'ble High Court held as under

Section 39(1) of the CGST/GGST Act provides that every taxpayer, except a few special categories of persons, shall furnish a monthly return in such form and manner as may be prescribed.

GSTR 3B is not a statutory return - Press Release dated 18.10.18 set aside

The Hon'ble High Court held as under-

Rule 61 of the CGST Rules/GGST Rules prescribes the form and manner of submission of monthly return. Rule 61(1) of the CGST Rules/GGST Rules provides that the return required to be filed in terms of Section 39(1) of the CGST/GGST Act is to be furnished in Form GSTR-3.

It would be apposite to state that initially it was decided to have three returns in a month, i.e. return for outward supplies i.e. GSTR-1 in terms of Section 37, return for inward supplies in terms of Section 38, i.e. GSTR-2 and a combined return in Form GSTR-3.

GSTR 3B is not a statutory return - Press Release dated 18.10.18 set aside

The Hon'ble High Court held as under

However, considering technical glitches in the GSTN portal as well as difficulty faced by the tax payers it was decided to keep filing of GSTR-2 and GSTR-3 in abeyance. Therefore, in order to ease the burden of the taxpayer for some time, it was decided in the 18th GST Council meeting to allow filing of a shorter return in Form GSTR-3B for initial period.

It was not introduced as a return in lieu of return required to be filed in Form GSTR-3. The return in Form GSTR-3B is only a temporary stop-gap arrangement till due date of filing the return in Form GSTR-3 is notified.

Notifications are being issued from time to time extending the due date of filing of the return in Form GST-3, i.e. return required to be filed under Section 39 of the CGST Act/GGST Act.

GSTR 3B is not a statutory return - Press Release dated 18.10.18 set aside

The Hon'ble High Court held as under

It was notified vide Notification No. 44/2018-Central Tax dated 10th September 2018 that the due date of filing the return under Section 39 of the Act, for the months of July 2017 to March 2018 shall be subsequently notified in the Official Gazette.

It would also be apposite to point out that the Notification No. 10/2017-Central Tax dated 28th June 2017 which introduced mandatory filing of the return in Form GSTR-3B stated that it is a return in lieu of Form GSTR-3.

However, the Government, on realizing its mistake that the return in Form GSTR-3B is not intended to be in lieu of Form GSTR-3, rectified its mistake retrospectively vide Notification No. 17/2017-Central Tax dated 27th July 2017 and omitted the reference to return in Form GSTR-3B being return in lieu of Form GSTR-3.

GSTR 3B is not a statutory return - Press Release dated 18.10.18 set aside

The Hon'ble High Court held as under

In view of the above, the impugned press release dated 18th October 2018 could be said to be illegal to the extent that its para-3 purports to clarify that the last date for availing input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR-3B (for the month of September 2018).

The said clarification could be said to be contrary to Section 16(4) of the CGST Act/GGST Act read with Section 39(1) of the CGST Act/GGST Act read with Rule 61 of the CGST Rules/GGST Rules.

Any ISSUES/ queries?



- <https://cbec-gst.gov.in/>
- [CBEC MITRA HELPDESK](#)
 - 1800 1200 232
 - cbecmitra.helpdesk@icegate.gov.in
- GSTN Help Desk
 - <https://selfservice.gstsystem.in/> - Grievance redressal portal
 - Help Desk Number: 0120-4888999

Any ISSUES/ queries?

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- For technology related issues
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THANK YOU