

# EY Tax Alert

CBIC issues clarifications pertaining to amnesty scheme under GST

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## Executive summary

This Tax Alert summarizes recent Circular<sup>1</sup> issued by Central Board of Indirect Taxes and Customs (CBIC) clarifying various issues relating to the provisions of waiver of interest and penalty (amnesty scheme) under Section 128A of the Central Goods and Services Tax Act, 2017 (CGST Act).

The key clarifications are:

- ▶ Benefit of amnesty scheme can be taken where the demand under notice or order pertains only to interest and/ or penalty, other than interest on self-assessed tax.
- ▶ Where notice/ order contains multiple issues, benefit of the scheme cannot be taken for part of the issues by making payment of tax only in respect of such issues and litigate other matters.
- ▶ In cases where notice or order covers issues both eligible and not eligible under the scheme, the benefit under Section 128A will be available only on payment of entire demand in such notice or order.
- ▶ If tax liability is enhanced in departmental appeal against the order in respect of which benefit of the scheme is being taken, it shall be subject to payment of additional amount of tax within three months from the date of the appeal order.
- ▶ Demands pertaining to irregular availment of transitional credit will also be covered under Section 128A, if the amount of such transitional credit has been availed in the period eligible for waiver.
- ▶ The benefit of waiver is not available with respect to demand of integrated tax charged on import of goods under the Customs Act, 1962.

<sup>1</sup> Circular No. 238/32/2024-GST dated 15 October 2024

## Background

- ▶ Vide Finance (No. 2) Act, 2024, Section 128A was inserted in the Central Goods and Services Tax Act, 2017 (CGST Act) w.e.f. 1 November 2024 for waiver of interest and penalty (amnesty scheme) in cases other than fraud or suppression of facts, for financial years (FY) 2017-18 to 2019-20, if entire tax demand as per notice or order is paid up to the notified date.
- ▶ Subsequently, Rule 164 along with certain forms was inserted in Central Goods and Services Tax Rules, 2017 (CGST Rules) for providing procedure and conditions for availment of benefit under Section 128A<sup>2</sup>.
- ▶ Central Board of Indirect Taxes and Customs (CBIC) has now issued a Circular<sup>3</sup> to clarify various doubts relating to availment of benefit under Section 128A.

## Key clarifications

- ▶ The benefit of the amnesty scheme under Section 128A will be applicable to taxpayers who have paid the tax component in full before or after the date on which the said Section comes into effect (*i.e.*, 1 November 2024), upto the date notified under Section 128A(1).

The benefit will be available irrespective of whether such payment was made before or after the issuance of the demand notice or order.

- ▶ Tax recovered from any other person on behalf of the taxpayer against a demand, shall also be considered as the tax paid towards the said demand for availing benefit of amnesty scheme.
- ▶ Any amount paid or recovered as interest or penalty pertaining to FY 2017- 18 to 2019-20 cannot be adjusted towards the amount payable as tax in any demand pertaining to the said periods.
- ▶ The benefit of amnesty scheme can also be taken where tax due has already been paid and the demand only pertains to interest and/or penalty.

However, the benefit of waiver of interest cannot be availed where the interest has been demanded on account of delayed filing of returns, or delayed reporting of any supply in the return.

- ▶ Taxpayer cannot avail partial waiver on certain issues by making part payment of the amount demanded and opt to litigate for the remaining issues. Section 128A(1) clearly provides that the

waiver is only applicable when the full amount of tax demanded is paid.

- ▶ The application to avail benefit can be filed in cases where the demand under notice or order partially pertains to tax periods covered under Section 128A and partially not covered under the said section, provided that the taxpayer pays the full amount of tax demanded under such notice or order.

However, the benefit of waiver will only be available for the period specified in Section 128A.

- ▶ Where the demand pertains to multiple issues including the one pertaining to erroneous refund, the benefit will only be available in respect of tax demand pertaining to other issues provided the taxpayer pays the full amount of tax demanded in the notice or order.

- ▶ In cases where Revenue has filed an appeal against the order eligible for amnesty scheme and the tax liability is enhanced in such appeal, the taxpayer will be required to pay the additional amount of tax within three months of the appeal order, failing which, the waiver of interest or penalty will become void.

- ▶ Applicant will be required to withdraw appeal, writ petition, and the Special Leave Petition pending before the Supreme Court (SC), if any, to apply for the amnesty scheme.

- ▶ The benefit of waiver will also be available for matters involving demand of integrated tax (IGST) and compensation cess.

- ▶ Demands pertaining to irregular availment of transitional credit will be covered under Section 128A if the amount of transitional credit has been availed in the period eligible for waiver and the notice for demand is issued under Section 73.

- ▶ Any penalty, including penalties under Section 73, 122, 125 *etc.*, demanded *vide* notice under Section 73, is covered under Section 128A. However, late fee, redemption fine, *etc.*, are not eligible for the waiver.

- ▶ The payment of tax can also be done by utilizing input tax credit (ITC) to take the benefit of waiver under Section 128A.

However, where demand pertains to tax payable under reverse charge mechanism (RCM) or by electronic commerce operator (ECO) under Section 9(5) or where demand pertains to erroneous refund, the payment will be required to be made by debiting electronic cash ledger.

<sup>2</sup> Refer our alert "*CBIC issues notifications pursuant to recommendations made in the 54<sup>th</sup> GST Council meeting*" dated 14 October 2024

<sup>3</sup> Circular No. 238/32/2024-GST dated 15 October 2024.

- ▶ Demand of IGST on import of goods under the Customs Act, 1962 is not eligible for benefit of the amnesty scheme.
- ▶ An applicant is required to pay the amount demanded in notice or order after deducting the amount not payable in accordance with Section 16(5) or 16(6).

In such cases, there is no requirement of rectification application as per procedure notified under Section 148 *vide* Notification No. 22/2024-Central tax.

## Comments

- a. Issue based settlement instead of notice or order based settlement under the amnesty scheme could have helped businesses to contest other issues where they have a strong case to defend the demand.
- b. Applicability of the scheme in case of notices or orders pertaining to only interest and/or penalty is a welcome clarification. However, the same could also have been extended to interest on self-assessed tax.
- c. Provision for withdrawal of even departmental appeal once the taxpayer files an application under the scheme, could bring in certainty for the applicant. Internal instructions to tax authority in this regard may also help.

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