

# EY Tax Alert

Government notifies effective date for amendments made in GST law *vide* Finance (No.2) Act 2024

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## Executive summary

This Tax Alert summarizes recent Notification<sup>1</sup> issued by Central Board of Indirect Taxes and Customs (CBIC) notifying effective date for the amendments made in Central Goods and Services Tax Act, 2017 (CGST Act) and allied laws *vide* Finance (No.2) Act, 2024.

Amendments effective from 1 July 2017:

- ▶ Time limit to avail ITC for FY 2017-18 till 2020-21 extended till 30 November 2021.
- ▶ ITC on any services received prior to 1 July 2017 by an ISD shall be eligible for distribution as GST credit, even if invoices are received prior to the said date.

Amendment effective from 27 September 2024:

- ▶ Functions of Appellate Tribunal expanded to include examination or adjudication of anti-profiteering cases.

Amendments made effective from 1 November 2024:

- ▶ Amnesty scheme to provide waiver of interest and penalty for pending demands in non-fraud cases for FY 2017-18 till 2019-20, if entire tax demand is paid up to the date to be notified.
- ▶ Government to be empowered regarding non-recovery of duties not levied or short-levied as a result of general prevalent trade practice.
- ▶ Common timeline to apply for issuance of SCNs and orders in both fraud and non-fraud cases from FY 2024-25 onwards.

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<sup>1</sup> Notification No. 17/2024 - Central Tax dated 27 September 2024 and Notification Nos. 18 and 19/2024 - Central Tax dated 30 September 2024

# Background

- Vide Finance (No.2) Act, 2024, Government had carried out various amendments in the Central Goods and Services Tax Act, 2017 (CGST Act), the Integrated Goods and Services Tax Act, 2017 (IGST Act), the Union Territory Goods and Services Tax Act, 2017 (UTGST Act) and Goods and Services Tax (Compensation to States) Act, 2017 (Cess Act) which were not yet made effective.
- Central Board of Indirect Taxes and Customs (CBIC) has now issued Notifications<sup>2</sup> to notify effective dates of such amendments.

## Budget Amendments Notified

### Reverse Charge Mechanism (RCM)

- Section 13(3) of the CGST Act provides for time of supply for services attracting reverse charge mechanism (RCM).

The above section was amended to provide that time of supply in respect of services received from unregistered person and attracting RCM will be earlier of:

- Date of payment;
- Date of issuance of self-invoice.

Also, Section 31(3)(f) of the CGST Act was amended to empower Government to prescribe time-limit to issue self-invoice in case of RCM supplies received from unregistered persons.

An explanation was inserted under Section 31(3) to clarify that self-invoice will be required where the supplier is registered solely for the purpose of deducting tax at source.

The above amendments shall come into effect from 1 November 2024.

### Input tax credit (ITC)

- Section 16(5) was inserted in CGST Act to extend time limit to avail ITC for financial year (FY) 2017-18 to 2020-21 till 30 November 2021 where the relevant GSTR-3B is filed up to such date

Further, Section 16(6) was inserted to provide that time limit to avail ITC where registration of the recipient is cancelled and subsequently restored will be extended to:

- 30 November of the subsequent financial year; or
- 30 days from the date of order of revocation, whichever is later.

The above extensions are retrospectively effective from 1 July 2017. However, no refund will be available where the tax has been paid or ITC has been reversed.

- Section 17(5)(i) restricts eligibility of ITC in respect of tax paid under Section 74, Section 129 and Section 130.

Under the amended provision w.e.f. 1 November 2024, ITC restriction on tax paid in accordance with Section 74 will be applicable only for tax paid for the period up to FY 2023-24.

The existing ITC restriction in respect of tax paid pursuant to detention and seizure of goods under Section 129 and tax paid following the confiscation of goods or conveyances under Section 130, will no longer be applicable.

- Section 140(1) of the CGST Act provides for transitional provisions to carry forward closing balance of CENVAT credit to the GST regime. Further, Sub-section (7) provides that ITC on account of services received prior to 1 July 2017 by an ISD shall be eligible for distribution as credit under GST even if the invoices are received on or after 1 July 2017.

Section 140(7) was amended to provide that ITC on account of any services received prior to 1 July 2017 by an ISD shall be eligible for distribution as GST credit, even if the invoices relating to such services are received prior to the appointed date i.e., 1 July 2017.

This amendment is made effective retrospectively from 1 July 2017.

### Returns

- Presently, as per Section 39(3) of the CGST Act, every registered person required to deduct tax at source needs to furnish return for the month in which such deductions have been made, within ten days after the end of such month.

The above provision is substituted to empower Government to prescribe the timeline through CGST Rules for filing returns by such persons. Such returns are mandatorily to be filed even if there are no deductions made in any month.

These provisions shall come into force from 1 November 2024.

### Demands and Recoveries

- Section 74A was inserted to *inter alia* provide that from FY 2024-25 onwards, a common time limit will apply for issuance of demand notices (42 months from the due date of filing relevant annual return) and demand orders (12 months from the date of

<sup>2</sup> Notification No. 17/2024 - Central Tax dated 27 September 2024 and Notification Nos. 18 and 19/2024 - Central Tax dated 30 September 2024

notice), irrespective of cases involving fraud or wilful misstatement. Consequential amendments were also made in other provisions of the CGST Act.

Current provisions of Section 73 which deals with non-fraud cases and Section 74 which deals with fraud cases will be applicable only for tax periods up to FY 2023-24.

The new provisions shall come into effect from 1 November 2024.

#### *Appeal before tribunal*

- ▶ Section 109(5) of the CGST Act provides that appeals against decisions from the Appellate or Revisional Authorities are to be heard by the Principal and State Benches of the Appellate Tribunal, with place of supply matters reserved for the Principal Bench.

Further, Section 109(6) allows the President to distribute the business of the Appellate Tribunal among the Benches and transfer cases as needed.

Section 109(5) was amended to empower the Government, based on the recommendations of the Council, to specify cases or classes of cases that will be heard exclusively by the Principal Bench.

Further, Section 109(6) was amended to ensure that the President's distribution of cases among the Benches is subject to the provisions of Section 109(5), i.e., cases where any issue relates to the place of supply, the same shall be heard only by the Principal Bench.

The above amendments have been made effective from 27 September 2024.

- ▶ Section 112 of the CGST Act was amended to provide that the three-month period for filing appeals before the Appellate Tribunal will start from a date to be notified by the Government or the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

The above amendment is made effective from 1 August 2024.

#### *Reduction in Pre-deposit*

- ▶ Section 107 and 112 were amended to reduce the quantum of pre-deposit required for filing appeals under GST. Similar amendments have been done under Section 20 of the IGST Act.

The amount of pre-deposit will be reduced in the following manner:

<i>Appellate Authority</i>	<i>Present</i>	<i>Proposed</i>
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First Appellate Authority	10% subject to maximum of INR 50 crores	10% subject to maximum of INR 40 crores
Appellate Tribunal	20% subject to maximum of INR 100 crores	10% subject to maximum of INR 40 crores

The amended provisions shall come into force from 1 November 2024.

#### *Waiver of interest and penalty*

- ▶ Section 128A was inserted to provide for a conditional waiver of interest and penalty in respect of statements/ notices/ orders issued under section 73 of the CGST Act for FY 2017-18 to 2019-20, if the entire tax demand as per statement, SCN or order is paid up to a date to be notified.

The said provision shall come into force from 1 November 2024.

#### *Anti-Profiteering*

- ▶ Section 171(2) was amended to empower the Government to issue notification, based on the recommendations of the GST Council, to specify the date from which the Anti-Profiteering Authority will stop accepting new applications for compliance examination under the Section.

Government has notified 1 April 2025 as the date from which the Authority shall not accept any request.

Further, Principal Bench of the Appellate Tribunal has been notified as the Authority to examine compliance under the Section.

Section 109(1) was also amended to extend the functions of the Appellate Tribunal to include examination or adjudication of anti-profiteering cases under Section 171(2).

#### *Miscellaneous*

- ▶ Section 9 was amended to exclude "*un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption*" from the levy of GST. Similar amendments were also made in IGST Act and UTGST Act.
- ▶ Section 11A was inserted to empower the Government, on the recommendations of the Council, to allow regularization of non-levy or short levy of GST, where tax was being short paid or not paid due to common trade practices. Corresponding amendments were also made in IGST Act, UTGST Act and Cess Act, 2017.
- ▶ In Schedule III to the CGST Act the following activities were included as "no supply":

- ▶ Apportionment of co-insurance premium by the lead insurer to the co-insurer, pertaining to insurance service, provided that the tax has been paid by the lead insurer on the entire amount of premium paid by the insured.
- ▶ Services by the insurer to the re-insurer, for which the ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer.
- ▶ Penalty provisions applicable to e-commerce operator under Section 122(1B) were made applicable only to those e-commerce operators who are required to collect tax at source under Section 52.
- ▶ Section 70(1A) was inserted to provide that a person summoned may appear either in person or through an authorized representative, as the proper officer may direct, in compliance with the summons.
- ▶ Section 16(5) of the IGST Act was proposed to be inserted to provide that, no refund of unutilized ITC or of integrated tax paid on account of zero-rated supply of goods shall be allowed where such supply is subjected to export duty.
- ▶ As per second proviso to Section 54(3), refund of ITC is restricted where goods exported are subject to export duty.

The above proviso was omitted, and a new sub-Section (15) was inserted to extend the restriction on refund to cases where such exports are made with payment of IGST. Similar restriction will also be placed on refund when taxpayer supplies such goods to SEZ developer or unit.

- ▶ Section 30 deals with revocation of cancellation of registration by proper officer. A new proviso was proposed to be inserted in Section 30(2) to prescribe that revocation of cancellation of registration shall be subject to such conditions and restrictions as may be prescribed by the Government.
- ▶ All the above amendments shall come into force from 1 November 2024.

## Comments

GST Council in its 54th meeting have recommended 31 March 2025 as the date on or before which the payment of tax would be required to be made to avail the benefit of Section 128A. Rule 164 will be inserted in the CGST Rules along with certain Forms for providing procedure and conditions for taking benefit of amnesty scheme. A Circular was also proposed to be issued in this regard.

Council had also recommended issuance of special procedure for rectification of orders under Section 148. This is for taxpayers who received orders under Section 73, 74, 107 or 108 for wrongful availment of ITC beyond the time limit prescribed under Section 16(4), but now permissible as per Section 16(5) and 16(6).

Exclusion of un-denatured ENA from GST is prospective and hence, the dispute remains unsettled for the past cases where many taxpayers have not paid tax on sale of ENA. Further, businesses may have to evaluate its taxability under the State Excise and VAT laws.

Vide Circular No. 224/18/2024 - GST, CBIC clarified that till the time GSTAT commences operations, recovery of amount of confirmed demand as per the Appellate Authority's order will be stayed on payment of an amount equal to pre-deposit and filing of an undertaking. Post 1 November 2024, taxpayers may compute the above amount as per the revised pre-deposit requirements.

Currently, Rule 47 of CGST Rules provides that the invoice referred to in Rule 46 shall be issued within a period of thirty days from the date of supply of service. Self-invoice is also covered within the ambit of Rule 46. It remains to be seen whether the timelines to be prescribed by the Government for issuance of self-invoice would be in line with Rule 47.

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