

# EY Tax Alert

## CBIC issues guidelines for claim of transitional credit pursuant to SC ruling

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

### Executive summary

This Tax Alert summarizes recent Circular<sup>1</sup> issued by Central Board of Indirect Taxes and Customs (CBIC) providing guidelines for filing/ revising TRAN-1/ TRAN-2 pursuant to the Supreme Court (SC) ruling<sup>2</sup>. Reference is invited to our earlier tax alerts dated 26 July 2022 and 5 September 2022.

The key clarifications are:

- ▶ The facility for filing or revising TRAN-1/TRAN-2 on Goods and Services Tax (GST) common portal will be available from 1 October 2022 to 30 November 2022 and the same would be a one-time opportunity.
- ▶ Transitional credit shall not be claimed in respect of forms (C-Forms etc.) issued after the due date of filing the original TRAN-1 i.e., 27 December 2017.
- ▶ Applicant shall submit to jurisdictional tax officer copy of TRAN-1/TRAN-2 along with declaration in "Annexure A" to the Circular and copy of TRANS-3, if applicable, within 7 days of filing.
- ▶ In case adjudication or appeal proceedings are pending, or proper officer has rejected the claim of credit partially or wholly, filing of a fresh declaration in TRAN-1/TRAN-2 would not be the appropriate course of action.
- ▶ Proper officer shall verify the TRAN-1/TRAN-2 filed by the taxpayer and pass an order after giving an opportunity of being heard. Post issuance of order, the amount shall be credited in the Electronic Credit Ledger.

<sup>1</sup> Circular No. 180/12/2022 dated 9 September 2022

<sup>2</sup> TS-369-SC-2022-GST & TS-442-SC-2022-GST

# Background

- Supreme Court (SC), while disposing of the batch appeals in the case of Filco Traders Centre Pvt Ltd<sup>3</sup>, had directed Goods and Services Tax Network (GSTN) to open GST common portal for aggrieved taxpayers to avail Transitional Credit [through filing/revising TRAN-1/TRAN-2] for two months starting from 1 September 2022.
- Subsequently, SC extended the time for opening the Goods and Services Tax (GST) common portal for the above purpose by four weeks<sup>4</sup>. Reference is invited to our earlier tax alerts dated 26 July 2022 and 5 September 2022.
- In accordance with the directions of the SC, the said facility will be made available by GSTN during the period from 1 October 2022 to 30 November 2022.
- Central Board of Indirect Taxes and Customs (CBIC) has now issued a Circular<sup>5</sup> providing guidelines to be followed in this regard.

# Key Clarifications/Guidelines

- Where the applicant is filing a revised TRAN-1/TRAN-2, the facility for downloading the said forms furnished earlier will be available on the GST common portal.
- The applicant shall at the time of filing/ revising TRAN-1/TRAN-2, also upload a declaration in the format given in "Annexure A" of the Circular.
- Applicant claiming credit on the basis of Credit Transfer Document should also upload the copy of TRANS-3 along with TRAN-1.
- Transitional credit should not be claimed in respect of C-Forms, F-Forms and H/I-Forms issued after the due date of filing original TRAN-1 i.e., 27 December 2017.
- Applicant should file one consolidated TRAN-2 instead of tax period wise as prescribed under Clause (b)(iii) of Rule 117(4) of the Central Goods and Services Tax Rules, 2017 (CGST Rules).

In such cases, in the column "Tax Period", the applicant will be required to mention the last month of the consolidated period for which the claim is being made.

- Applicant shall submit to jurisdictional tax officer a copy of TRAN-1/TRAN-2 along with "Annexure A", and copy of TRANS-3, if applicable, within 7 days of filing.
- Further, Applicant shall keep all required documents/ records/ returns/ invoices ready for verification by the concerned tax officers.
- The option of filing or revising TRAN-1/TRAN-2 on the GST common portal during the above period is a one-time opportunity. Accordingly, applicant shall take utmost care and precaution while furnishing the forms.

- GSTN will issue a detailed advisory on technical aspects for filing TRAN-1/TRAN-2 in GST common portal.
- Those registered persons, who had successfully filed TRAN-1/TRAN-2 earlier, and who do not require to make any revision in the same, are not required to take any action again.
- In case if the claim of credit has either wholly or partly been rejected by the proper officer, the appropriate action would be to prefer an appeal or to pursue alternative remedy as available under law.
- Further, where adjudication/appeal proceedings are pending against denial of credit, right course of action would be to continue the said proceedings instead of filing fresh declaration in TRAN-1/TRAN-2.
- Post verification of the claim, proper officer shall pass an order after giving a reasonable opportunity of being heard to the applicant. The transitional credit allowed as per the order will be reflected in the Electronic Credit Ledger of the applicant.

## Comments

In view of the clarity on timelines to make fresh claims of transitional credits, the industry should make every effort to identify and collate all missed tax credits and take benefit of one-time window opened by the Government.

Many State VAT authorities had issued statutory forms like C-Form, F-Form, etc. post 27 December 2017. Restricting the claim of credit in such cases would cause undue hardship to taxpayers.

Industry may have to evaluate the appropriate course of action for cases pending before the Adjudicating or Appellate authority as such credits cannot be routed through the revised transitional forms.

The Circular does not address the situation where the proper officer does not verify the claim of credit within a period of 90 days. In such cases, credit should be allowed without any further verification.

While CBIC has issued guidelines for TRAN-1/TRAN-2, clarification on a few procedural aspects such as transition of credit by ISD and its further distribution, may help remove ambiguity and avoid litigation. There is a Bombay High Court ruling in this regard.

<sup>3</sup> TS-369-SC-2022-GST

<sup>4</sup> TS-442-SC-2022-GST

<sup>5</sup> Circular No.180/12/2022-GST dated 9 September 2022

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