

EY Tax Alert

CBIC issues Notifications and Circulars pursuant to 47th GST Council Meeting

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 Notifications¹ and Circulars² issued by Central Board of Indirect Tax and Customs (CBIC) pursuant to recommendations made by the Goods and Services Tax (GST) Council in their 47th Meeting.

The key changes are:

- ▶ Declaration is to be provided on invoice where taxpayers are exempted from issuing e-invoice.
- ▶ Manner of calculating interest on delayed payment of tax and reversal of wrongly availed and utilized input tax credit (ITC) under various scenarios have been prescribed.
- ▶ Manner of disclosure of ITC in GSTR-3B have been clarified. Further, the consequential changes have been made in the said return.
- ▶ Clarification provided with respect to demand and penal provisions for transactions involving fake invoices.
- ▶ It is clarified that refund in case of inverted tax structure will be eligible for supplies under concessional rate notification.
- ▶ Clarification provided on applicability of GST on employee perquisites. Procedure for re-credit of ITC on account of repayment of erroneous refund has also been prescribed.
- ▶ Supplies by Duty Free shops (DFS) to be treated on par with exports and accordingly, earlier rules and consequential circular have been withdrawn.

¹ Notification No. 9 to 14/2022- Central Tax all dated 5 July 2022

² Circular No. 170 to 176 - GST all dated 6 July 2022

Background

- ▶ Goods and Services Tax (GST) Council had held its 47th meeting on 28 and 29 June 2022 at Chandigarh.
- ▶ In the said meeting, the Council had made recommendations relating to changes in GST rates on supply of goods and services and law and procedures. Reference is invited to our tax alert dated 30 June 2022³.
- ▶ Central Board of Indirect Taxes and Customs (CBIC) has now issued Notifications⁴ and Circulars⁵, giving effect to such recommendations.

Key Changes

Declaration for non-issuance of e-invoice

- ▶ Rule 48(4) of the Central Goods and Services Tax Rules, 2017 (CGST Rules) requires notified class of persons to prepare e-invoice if the aggregate turnover in any financial year from 2017-18 exceeds the prescribed limit. Further, certain registered persons are exempted from such compliance even if their turnover exceeds the above limit.
- ▶ Rule 46 of the CGST Rules specifies the content to be included while issuing a tax invoice. The said rule has been amended w.e.f. 5 July 2022 requiring the above class of exempted persons to include the following declaration in the invoices issued by them:

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."

Manner of calculating interest

- ▶ Rule 88B has been inserted in the CGST Rules with retrospective effect from 1 July 2017 for prescribing manner of calculating interest on delayed payment of tax.
- ▶ As per the said rule, in case of delay in filing of return, interest will be levied only on the net tax liability, which is paid by debiting the electronic cash ledger (ECL), unless such return is furnished after commencement of any proceedings under Section 73 or 74 of the Central Goods and Services Tax Act, 2017 (CGST Act) in respect of the said period.
- ▶ In all other cases, where interest is payable under Section 50(1), it will be levied on gross tax liability and calculated from the due date of payment till the actual date of payment.

- ▶ In case of input tax credit (ITC) wrongly availed and utilized, interest shall be calculated from the date of utilization of such wrongly availed ITC till the date of reversal or payment of such amount.
- ▶ Further, ITC wrongly availed shall be construed to have been utilized, when balance in the electronic credit ledger (ECRL) falls below the amount of ITC wrongly availed.
- ▶ The extent of such utilization of ITC = Amount of ITC wrongly availed - the balance in ECRL.
- ▶ The date of utilization of such ITC shall be taken to be:
 - ▶ On account of payment of tax whilst filing of return - due date of return or actual date of filing of return, whichever is earlier.
 - ▶ In all other cases, date of debit in ECRL.

Valuation of goods exported

- ▶ Rule 89(4) prescribes the formula for calculating the refund in case of zero-rated supplies without payment of tax.
- ▶ An explanation has been inserted in the above Rule to prescribe that the value of goods exported out of India shall be taken as lower of free-on-board (FOB) value as declared in shipping bill/ bill of export and value as per invoice/ bill of supply.

Mismatch in respect of shipping bill

- ▶ Rule 96(1)(b) has been amended to provide that in case of export of goods with payment of tax, if there is any mismatch between the data in the shipping bill and GSTR-1, the application for refund of tax shall be deemed to have been filed on such date when such mismatch is rectified by the exporter.

Furnishing of correct and proper information in GSTR-3B & GSTR-1

- ▶ It has been clarified that it is mandatory to furnish correct and proper information of inter-state supplies and amount of ineligible or blocked ITC and reversal thereof in GSTR-3B and GSTR-1.
- ▶ Details of inter-state supplies made to unregistered persons, composition taxable persons and UIN holders are required to be furnished **place of supply-wise** in Table 3.2 of GSTR-3B, even though the same have been furnished in Table 3.1.
- ▶ Changes have been made in respect of furnishing information regarding ITC availed, reversal thereof and ineligible ITC in Table 4 of GSTR-3B, which are as follows:
 - ▶ In table 4(A), total ITC (eligible as well as ineligible) will be auto-populated from GSTR-2B in different

³ IDT Alert - GST Council recommends rate rationalization and changes in GST law and procedure

⁴ Notification No. 9 to 14/2022 - Central Tax all dated 5 July 2022

⁵ Circular No. 170 to 176 - GST all dated 6 July 2022

fields, except for the ineligible ITC on account of time period limitation in Section 16(4) or where the recipient of an intra-state supply is located in a different State/ Union Territory (UT) than that of place of supply.

- ▶ In Table 4(B)(1), registered person shall report reversal of ITC, which are permanent and not reclaimable, such as, on account of Rule 38, 42 or 43 and ineligible ITC under Section 17(5).
- ▶ In Table 4(B)(2), registered person shall report reversal of ITC, which are not permanent in nature and can be reclaimed in future subject to fulfilment of specific conditions, such as, on account of Rule 37, Section 16(2)(b) and Section 16(2)(c).
- ▶ The net ITC available in Table 4(C) is as per the formula $4A - [4B(1) + 4B(2)]$ and same will be credited to the ECRL of the registered person.
- ▶ Reclaimed ITC shall be shown under table 4(D)(1) for disclosure purpose. It has been clarified that reversal of ITC under Section 17(5) is being provided in Table 4(B), and hence the same need not be reported in Table 4(D)(1).
- ▶ In Table 4(D)(2), registered person may report ITC not available, on account time period limitation in Section 16(4) or where the recipient of an intra-state supply is located in a different State/ UT than that of place of supply.
- ▶ For the aforementioned purpose, changes have been made in Form GSTR-3B.
- ▶ Further, separate columns have been prescribed for reporting of turnover in case of supplies made through e-commerce operator.

Applicability of demand and penalty in respect of fake invoicing

- ▶ Various issues have been clarified regarding applicability of demand and penalty in respect of fake invoicing with the help of illustrations. The same is summarized below:

Case 1

- ▶ "A" issued tax invoice to "B" without any underlying supply of goods or services.
- ▶ Since there is no supply as per Section 7, no tax liability arises against A and accordingly, no demand and recovery/ penal action is required under Section 73 or 74 in respect of the same.
- ▶ However, A will be liable for penal action under Section 122(1)(ii) for issuing tax invoices without actual supply of goods or services.

Case 2

- ▶ "A" has issued tax invoice to "B" without any underlying supply of goods or services.
- ▶ B avails ITC on the said tax invoice. He further issues

invoice along with underlying supply of goods or services to "C" and utilizes the above ITC for payment of tax liability.

- ▶ Since B has availed and utilized ITC without receiving the goods or services, the same is in contravention of the provisions of Section 16(2)(b).
- ▶ Therefore, B shall be liable for demand and recovery of the said ITC under Section 74 along with interest and penalty.
- ▶ Further, as per provisions of Section 75(13), if penal action is taken under Section 74, no penalty for the same act can be imposed under any other provisions of CGST Act, including under Section 122.

Case 3

- ▶ "A" has issued tax invoice to "B" without any underlying supply of goods or services.
- ▶ B avails ITC on the said tax invoice and further passes on the same to "C" by issuing invoice without underlying supply of goods or services.
- ▶ ITC availed by B on tax invoice issued by A, is without actual receipt of goods or services, and is ineligible in terms of Section 16(2)(b).
- ▶ There was no supply of goods or services by B to C and no tax liability arose in respect of the said transaction.
- ▶ Therefore, no demand and recovery of either ITC or tax liability is required to be made from B under Section 73 or 74 of CGST Act.
- ▶ However, B shall be liable for penal action under Section 122(1)(ii) and Section 122(1)(vii), both, for issuing invoices without any actual supply of goods or services and for taking/ utilizing ITC without actual receipt of goods or services.
- ▶ It has also been clarified that actual action to be taken against a person will depend upon the specific facts and circumstances of the case and provisions relating to arrest may also be invoked if the situation arises.

Clarification on various issues pertaining to GST

- ▶ CBIC has provided clarification on certain issues, which are as follows:
 - ▶ **Refund claim by the recipient of deemed export supplies**
 - Claim of refund of tax paid on deemed export supplies by the recipient is not availing of ITC and hence, not subjected to provisions of Section 17.
 - Also, the aforementioned amount is not to be included in the "Net ITC" for computation of refund of unutilized ITC on account of zero-rated supplies/ inverted tax structure.

► **Clarification on various issues of Section 17(5)**

- Section 17(5)(b) was amended to allow ITC in respect of notified goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force which was otherwise not available as ITC.
- It has been clarified that this amendment to allow ITC is applicable to all goods and services covered under clause (i), (ii), and (iii) of Section 17(5)(b).
- Further, the term “leasing” referred in Section 17(5)(b) covers leasing of motor vehicles, vessels, and aircrafts only and not leasing of any other items. Hence, ITC w.r.t leasing of only motor vehicles, vessels and aircrafts is blocked as per Section 17(5).

► **Perquisites provided by employer to the employees as per contractual agreement**

- Perquisites provided by the employer to the employee in terms of contractual employment agreement, will not be subjected to GST as it is in lieu of the services provided in relation to employment.

► **Utilization of amount available in the ECRL and ECL for payment of tax and other liabilities**

- Any payment towards tax liability (other than tax payable under reverse charge mechanism, erroneous refund in cash) whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST laws, can be made by utilization of the amount available in ECRL.
- Further, the credit lying in ECRL cannot be used for making payment of any interest, penalty, fees, or any other amount payable under the law.
- Also, ECL may be used for making any payment towards tax, interest, penalty, fees, or any other amount payable under the provisions of GST.

Clarification on issue of claiming refund under inverted tax structure

- Refund of accumulated ITC on account of inverted tax structure would be allowed in cases where accumulation of credit is due to rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, due to some concessional rate notification.
- Further, the refund will not be available if the input and output supplies attract different tax rates at different points in time.
- The same is illustrated in the following table:

Particulars	Scenario 1	Scenario 2
Accumulated ITC	100	100
Date of inward supply	1 July 22	1 July 22
Rate of Tax	18%	18%
Date of outward supply	1 August 2022	1 August 2022
Rate of Tax applicable on outward supply	5%	18%
Rate of tax due to concessional rate notification	-	5%
Whether refund available	No	Yes

Prescribing manner of re-credit in ECRL on repayment of erroneous refund

- A new functionality of GST PMT-03A has been developed which allows proper officer to re-credit the amount in ECRL of the taxpayer on repayment of erroneous refund.
- It has been clarified that in respect of the following categories of erroneous refund, re-credit of amount in the ECRL can be done through PMT-03A:
 - Refund of IGST obtained in contravention of Rule 96(10).
 - Refund of unutilized ITC on account of:
 - Export of goods or services without payment of tax.
 - Supply of goods or services to SEZ developer/ Unit without payment of tax.
 - Inverted tax structure.
- Also, the procedure have been prescribed for re-credit of the said amount in ECRL.

Manner of filing refund of unutilized ITC on account of export of electricity

- Difficulties were faced by exporters of electricity in filing refund application for unutilized ITC due to non-availability of shipping bill.
- Accordingly, CBIC has now prescribed separate procedure for filing and processing of refund of unutilized ITC on account of export of electricity.

Supplies from Duty Free Shops to be treated as export

- As per the recent press release issued by the Ministry of Finance in respect of 47th GST Council meeting, supplies from Duty Free Shops (DFS) at international terminal to outgoing international passengers are to be treated as exports by DFS.
- Consequently, Rule 95A of CGST Rules along with Circular No. 106/25/2019-GST dated 29 June 2019 have been rescinded with effect from 1 July 2019.

Comments

- a. Compliance by way of declaration regarding non-issuance of e-invoice made effective from 5 July 2022 is likely to put taxpayers to inconvenience as it would require necessary changes in their IT system/ business processes.

Further, the applicability of declaration in few scenarios, for instance, in case of debit/ credit notes and B2C invoices, requires more clarity.

- b. Considering the requirement of disclosing in GSTR-3B, the ineligible ITC pertaining to intra-state supply where place of supply is different from that of location of recipient, taxpayers may have to evaluate the eligibility of credit in respect of inter-state supplies in similar situation.
- c. Re-credit mechanism prescribed for erroneous refund under various situations is a welcome move.

However, clarification is required on the re-credit mechanism in case of repayment of refunds owing to non-receipt of foreign exchange within prescribed timelines in terms of Rule 96B.

- d. Section 54(3) does not prohibit claiming refund of unutilized ITC in case of inverted tax structure where the rate of tax on inputs and outward supplies are different at different points in time. This view has been endorsed earlier by Calcutta High Court. However, the Circular appears to restrict such refunds.
- e. Clarification on taxability of perquisites provided by employer to employee appears to be supporting the Government's viewpoint provided in press release in July 2017. Taxpayers may have to evaluate the tax position adopted for such transactions pursuant to this clarification.

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