

EY Tax Alert

CBIC notifies effective date for amendments in CGST Act and modifies CGST Rules

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 issued by Central Board of Indirect Taxes and Customs (CBIC).

Vide Finance Act, 2022, Government had proposed various amendments in the Central Goods and Services Tax Act, 2017 (CGST Act). The following amendments have been now made effective from 1 October 2022:

- ▶ Conditions for availing input tax credit (ITC)
- ▶ Levy of late fees for delayed furnishing of tax collected at source (TCS) return
- ▶ Timelines for the following compliances linked to due date for filing September return shifted to 30 November:
 - ▶ Availment of ITC
 - ▶ Disclosure of credit note
 - ▶ Rectification of error or omission in GSTR-1, GSTR-3B and TCS return
- ▶ Omission of provisions related to ITC matching mechanism
- ▶ Due dates for furnishing of returns by non-resident taxable person
- ▶ Cancellation of GST registration for default in return filing

CBIC has also made consequential amendments to Central Goods and Services Tax Rules, 2017 (CGST Rules) effective 1 October 2022.

¹ Notification No. 18 to 20/2022- Central Tax all dated 28 September 2022

Background

- ▶ Vide Finance Act, 2022, Government had proposed various amendments in the Central Goods and Services Tax Act, 2017 (CGST Act). However, many of these amendments were not made effective till date.
- ▶ Central Board of Indirect Taxes and Customs (CBIC) has now issued Notification², making such amendments effective from 1 October 2022. Earlier, provisions relating to transfer of cash balance under Section 49 and interest on availment and utilization of input tax credit (ITC) under Section 50 was notified with effect from 5 July 2022.
- ▶ CBIC has also made consequential amendments to Central Goods and Services Tax Rules, 2017 (CGST Rules) effective 1 October 2022³.

Budget Amendments Notified

Input tax credit

- ▶ Clause (ba) is inserted in Section 16(2) to provide that a taxpayer shall not be entitled to ITC if the same is restricted as per details communicated under Section 38.
- ▶ Section 38 which provides for furnishing details of inward supplies, is substituted by new provision.

As per the amended provisions, the details of outward supplies furnished by the supplier in GSTR-1 and an auto-generated statement containing the details of ITC shall be made available electronically to the recipient in such form [i.e., GSTR-2B], manner and within such time as may be prescribed.

Along with details of inward supplies in respect of which ITC may be available to the recipient, the statement shall also contain details of supplies for which credit is restricted on account of following:

- ▶ Procurements from supplier within such period of taking registration, as may be prescribed;
- ▶ Supplier has defaulted in tax payment and default has continued for prescribed period;
- ▶ Supplier's output tax liability as per details declared in GSTR-1 exceeds the output tax paid in GSTR-3B, by a prescribed limit;
- ▶ Supplier has availed ITC in excess of credit eligible to him as per the auto generated statement, beyond the prescribed limit;
- ▶ Supplier has paid proportion of output tax through credit in excess of limits prescribed under Section 49(12);
- ▶ Procurements from any other class of suppliers, as may be prescribed.

Consequential amendments have also been made in other provision of CGST Act.

- ▶ Earlier, Section 41 provided that a registered person can take the credit of self-assessed ITC in GSTR-3B, and such amount shall be credited on a provisional basis to his electronic credit ledger. This credit shall be utilized only for payment of self-assessed output tax.

Section 41 is entirely substituted with a new provision. Now, a registered person will be entitled to avail credit of self-assessed ITC. If supplier has not paid tax for a supply, ITC will have to be reversed along with applicable interest. Such ITC can be re-availed when supplier makes payment of tax.

- ▶ At the time of introduction of GST, CGST Act provided for a three-step return filing process (GSTR-1, 2, and 3) involving two-way communication between the supplier and recipient for matching of credits on GST portal. The said procedure has been done away with.

Accordingly, Sections 42, 43 & 43A have been omitted. Further, consequential amendments have been made in other provisions of CGST Act.

Extension of timelines

- ▶ Before the amendment, following provisions of CGST Act specified timeline basis due date of filing return for September of the following financial year:

Section	Provision
16(4)	Time limit for availing ITC
34(2)	Declaring credit note details
first proviso to 37(3)	Rectification of error or omission in respect of details furnished in GSTR-1
first proviso to 39(9)	Rectification of omission or incorrect particulars in GSTR-3B
first proviso to 52(6)	Rectification of omission or incorrect particulars in TCS return

Now, the said timelines are extended till 30 November of the following financial year.

Filing of returns and payment of taxes

- ▶ A taxpayer shall not be allowed to furnish the details of outward supplies or GSTR-3B for a tax period, if GSTR-1 for any of the previous tax periods has not been furnished by him. However, Government may relax such restriction through notification.
- ▶ Non-resident taxable person shall furnish the monthly return by 13th of the next month.
- ▶ While filing GSTR-3B, registered person covered under proviso to section 39(1) will have to pay self-assessed tax or in lieu of self-assessed tax, an amount to be determined in the manner as may be prescribed.

² Notification No. 18/2022 - Central Tax dated 28 September 2022

³ Notification No. 19/2022- Central Tax dated 28 September 2022

- ▶ Late fees for delayed filing of return will also be applicable to return filed by e-commerce operator for tax collected at source.
- ▶ Government is empowered to prescribe restrictions on utilization of electronic credit ledger and maximum proportion of output tax liability which can be paid by utilizing ITC⁴.

Refund

- ▶ Relevant date for filing refund claim in respect of supplies made to Special Economic Zone (SEZ) unit/developer shall be the due date of filing GSTR-3B for such supplies.
- ▶ A specialized agency of the United Nations Organization or other specified persons under Section 55 of CGST Act can make the refund application up to two years from the last day of quarter in which the supply was received. Consequently, earlier Notification⁵ issued extending timeline up to 18 months has been rescinded⁶.
- ▶ Refund of balance in electronic cash ledger shall be claimed through RFD-01 instead of GSTR-3B.

Registration

- ▶ Registration can be cancelled in following cases:
 - ▶ A person paying tax under composition scheme has not furnished return beyond three months from the due date.
 - ▶ In cases other than the above, if the return is not furnished for continuous tax periods as may be prescribed.

Changes made in GST Rules

- ▶ Pursuant to budget amendments notified, consequential amendments have been made in CGST Rules.
- ▶ Earlier, Rule 37 of CGST Rules provided for reversal of proportionate input tax credit in Form GSTR-2 for the month immediately following 180 days from the date of invoice. Further, interest was separately levied as per rate prescribed in Section 50(1).

The rule has been amended to make registered person pay an amount equal to ITC availed in case value of supply and tax are not paid to vendor within timeline prescribed as per second proviso to Section 16(2).

Such payment shall be made in GSTR-3B of the tax period following the period of 180 days from the date of invoice. Upon payment to vendor, registered person can re-avail the credit. Further, interest shall be levied under Section 50.

- ▶ As discussed above, registration can be cancelled, in case taxpayer defaults in furnishing returns for continuous tax periods. Such prescribed periods are as follows:

Return filer	Default Period
Monthly	6 months
Quarterly	2 quarters

Comments

- Bringing into effect the amendments for extending the timelines for various compliances is a welcome move and taxpayer friendly measure.

Its applicability for the financial year 2021-22 may however, need to be evaluated.

With respect to revised timelines, clarity is required whether such compliances can be done in GSTR-3B filed for the month of November of the following financial year.

- The amended provisions of Section 38 provides that ITC will not be available if the same is restricted in auto-generated statement on account of supplier's default.

Taxpayers are likely to face challenges in claiming credit if these restrictions are imposed as they are beyond recipient's control. This may also result in blockage of working capital.

- Currently, taxpayers are required to reverse proportionate ITC due to non-payment of consideration to the vendor within 180 days. However, amendment to Rule 37 does not explicitly provide for reversal on a proportionate basis.
- Basis the amended provisions of Section 41, if the supplier has not paid tax in respect of a supply, ITC will have to be reversed along with interest. While credit can be re-availed, provisions are silent regarding re-credit/ refund of interest.

⁴ Provisions to support Rule 86A and Rule 86B of CGST Rules, 2017

⁵ Notification No. 20/2018- Central Tax dated 28 March 2018

⁶ Notification No. 20/2022- Central Tax dated 28 September 2022 effective from 1 October 2022

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