

EY Tax Alert

CBIC notifies effective date for amendments under GST law made *vide* Finance Act 2021 and 2023

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 Taxes and Customs (CBIC).

The highlights are:

- ▶ Amendment made in Section 16 of the Integrated Goods and Services Tax Act, 2017 (IGST Act) *vide* Finance Act, 2021 and various other amendments in Central Goods and Services Tax Act, 2017 (CGST Act) and IGST Act *vide* Finance Act, 2023 are being made effective from 1 October 2023.
- ▶ Changes in provisions relating to GST Appellate Tribunal are made effective from 1 August 2023.
- ▶ For transitional credits, special procedure is being prescribed for filing appeal against the order passed by proper officer in accordance with Circular No. 182/14/2022-GST.
- ▶ Registered person having aggregate turnover up to INR2 crores in financial year 2022-23 have been exempted from filing annual return in Form GSTR-9.
- ▶ Clarifications have been issued on various issues under GST, basis recommendations made in the 50th GST Council Meeting.

¹ Notification No. 27 to 35/2023- Central Tax and Notification No. 01/2023 - Integrated Tax, Dated 31 July 2023

² Circular No. 200 and 201- GST both dated 1 August 2023

Background

- ▶ *Vide* Finance Act, 2021 and 2023, Government had carried out various amendments in the Central Goods and Services Tax Act, 2017 (CGST Act) and the Integrated Goods and Services Tax Act, 2017 (IGST Act) which were not yet made effective.
- ▶ Central Board of Indirect Taxes and Customs (CBIC) has now issued Notifications³ to notify effective dates of such amendments and prescribe special procedure in respect of certain matters.
- ▶ Further, CBIC has also issued Circulars⁴ clarifying issues under Goods and Services Tax (GST), as recommended in the 50th GST Council Meeting.

Highlights

Amendments made effective from 1 August 2023

GST Appellate Tribunal

- ▶ The provisions relating to GST Appellate Tribunal under Sections 109, 110 and 114 of the CGST Act were amended.
- ▶ The Principal Bench at Delhi shall have a President, a Judicial member, a Technical Member (Centre) and a Technical Member (State). The State Benches shall have two Judicial Members, a Technical Member (Centre) and a Technical Member (State).
- ▶ The cases in appeal where any of the issues relate to place of supply shall be heard by the Principal Bench only.
- ▶ Further, where the disputed amount does not exceed INR 50 lakhs and the matter does not involve question of law, the appeal shall be heard by a single member. In all other cases, appeal shall be heard together by one Judicial Member and one Technical Member.
- ▶ Consequential amendments were carried out in Section 117, 118 and 119.

Amendments made effective from 1 October 2023

Zero-rated supplies

- ▶ Amendment in Section 16 of the IGST Act carried out *vide* Finance Act, 2021 is made effective from 1 October 2023.
- ▶ Accordingly, supplies made to SEZ unit/ developer will qualify as zero-rated supply only if the same are for authorized operations.
- ▶ Further, the option of making zero-rated supplies on payment of integrated tax (IGST) and claiming refund of the same will be restricted only to specified class of persons and supplies.

In this regard, CBIC has notified⁵ that all goods and services, except certain specified tobacco related products, can be exported on payment of IGST.

- ▶ The time limit to realize sale proceeds of goods exported without payment of tax has been linked to Foreign Exchange Management Act, 1999 (FEMA). In case of non-realization of money within the stipulated time, the person will have to deposit the refund claimed along with interest, within 30 days of expiry of FEMA time limit.

Composition Scheme

- ▶ Section 10(2) and 10(2A) of the CGST Act provides for the category of registered persons eligible to opt for the composition scheme.

In terms of Section 10(2)(d) and 10(2A)(c), persons supplying goods or services through e-commerce operators (ECOs), who are required to collect tax at source under Section 52, are not eligible to opt for composition scheme.

- ▶ Amendment was made to allow registered person engaged in supply of goods through ECO to opt to pay tax under composition scheme.

Input tax credit

- ▶ Section 17(3) of the CGST Act deals with calculation of value of exempt supplies for the purpose of reversal of common input tax credit (ITC).

Explanation to the said Section was amended to restrict availment of ITC in respect of transactions covered in Entry 8(a) of Schedule III, as may be prescribed, by including the value of such transactions in the value of exempt supply.

Entry 8(a) of Schedule III deals with supply of warehoused goods before their clearance for home consumption.

- ▶ Under Section 17(5), clause (fa) was inserted to restrict ITC in respect of goods or services received by a taxable person, which are used or intended to be used for fulfilling corporate social responsibility obligation referred under Section 135 of the Companies Act, 2013.

Person not liable to obtain registration

- ▶ Section 23(2) of the CGST Act was retrospectively substituted w.e.f. 1 July 2017 to provide that the provisions of compulsory registration under Section 22 and 24 will not apply where the person is exempted from obtaining registration under GST.
- ▶ In this regard, CBIC has notified that the persons making supplies of goods through an ECO, having an aggregate turnover in the preceding and the current financial year (FY) not exceeding the threshold limit as per Section 22(1), are exempted from obtaining registration subject to fulfilment of certain conditions.

Revocation of cancellation of registration

³ Notification No. 27 to 35/2023- Central Tax all dated 31 July 2023

⁴ Circular No. 200 and 201- GST both dated 1 August 2023

⁵ Notification No. 01/2023 - Integrated Tax dated 31 July 2023

- ▶ As per Section 30, the timelines for making application for revocation of cancellation of registration is 30 days from the date of service of cancellation order.
- ▶ The said provision was amended to empower the Central Government to prescribe the timelines.
- ▶ Consequently, the proviso empowering the Commissioner and Additional/ Joint Commissioner to extend the time limit was omitted.

Best judgement assessment

- ▶ Currently, if the taxpayer furnishes a valid return within 30 days of passing of the best judgment assessment order, the said order shall be deemed to be withdrawn.
- ▶ The time period of 30 days was extended to 60 days. A further extension of 60 days can also be made available to submit the valid return upon payment of additional late fees of INR100 for each day of delay beyond 60 days from the service of the order. This shall be over and above the liability to pay interest under Section 50 and late fee under Section 47.

Time limit to file returns and statements

- ▶ Section 37(5), 39(11), 44(2) and 52(15) was inserted to provide that GSTR-1, 3B, 4, 5, 6, 7, 8, 9 and 9C will not be allowed to be filed after the expiry of three years from the relevant due date.

However, the Government by way of notification may allow registered person or class of registered person to furnish such return and statement even after the expiry of three years.

Provisional refund on account of zero-rated supply

- ▶ Section 54(6) states that the refund on account of zero-rated supplies of goods or services granted on provisional basis shall be 90% of the total amount of refund claimed, excluding the ITC provisionally accepted.
- ▶ The words “excluding the input tax credit provisionally accepted” was deleted.

Interest on delayed refunds

- ▶ Section 56 provides that if any tax ordered to be refunded as per Section 54(5) has not been refunded within 60 days from the date of receipt of application, interest shall be payable for the period from the date immediately after the expiry of the said 60 days till the date of refund of such tax.
- ▶ Amendment was made to empower the Government to prescribe the manner of computation of interest. Also, the Government can now prescribe conditions and restrictions for granting such interest.

Penal provisions introduced for ECO

- ▶ A new sub-section (1B) was inserted in Section 122 (penalty for certain offences) to provide that any ECO who:
 - ▶ allows a supply of goods or services through it by an unregistered person other than a person exempted

- ▶ from registration,
 - ▶ allows inter-state supply of goods or services through it by a person who is not eligible to make such inter-state supply,
 - ▶ fails to furnish the correct details in the statement of outward supply of goods under section 52(4) effected through it by a person exempted from obtaining registration under this Act,
- shall be liable to pay a penalty of INR20,000 (CGST + SGST) or an amount equivalent to amount of tax involved had such supply been made by a registered person other than composition taxpayer, whichever is higher.

De-criminalization of certain offences and increase in monetary limit for launching prosecution

- ▶ Section 132 deals with punishment for certain offences. Following offences were omitted from Section 132(1):
 - ▶ obstruction or preventing any officer in the discharge of their duties,
 - ▶ tampering of material evidence or documents, and
 - ▶ failure to supply correct information or furnishing incorrect information.
- ▶ Consequential amendments were carried out in other provisions to remove the reference of above offences.
- ▶ Further, the minimum threshold for prosecution was raised from INR1 crore to INR2 crores. However, offence of issuance of invoices without supply of goods or services will not be covered for such increase.

Compounding of offences

- ▶ Amendment was carried out in Section 138(1) to expand as well as restrict the scope of compounding of offences.
- ▶ Compounding will not be allowed to:
 - ▶ a person who has been accused of committing an offence of issuance of invoices without supply,
 - ▶ a person who has been allowed to compound once in respect of the following offences:
 - ▶ acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation;
 - ▶ receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of the CGST Act or the Rules made thereunder.
- ▶ Earlier, compounding was not allowed in following cases:
 - ▶ a person who has been allowed to compound once in respect of any offence not covered for punishment/ prosecution in respect of supplies of value exceeding INR1 crore,
 - ▶ a person who has been accused of committing an offence under GST law which is also an offence under any other law for the time being in force.

Now, the taxpayer will be able to compound such offences.

- ▶ Compounding for the following offences will also be

allowed:

- ▶ Obstruction or preventing any officer in discharge of his duties
 - ▶ Tempering of material evidence
 - ▶ Failure to supply or furnish incorrect information
- ▶ Further, Section 138(2) was amended to revise the lower and upper limits of the amount for compounding of an offence to 25% and 100% of the tax amount, respectively.

Consent based sharing of information

- ▶ Section 158A was inserted for prescribing manner and conditions for sharing of the information furnished by taxable person on the common portal with such other systems or authorities as may be notified.

Further, CBIC notified “account aggregator” as the systems with which information may be shared by the common portal based on consent under aforesaid Section.

Here “account aggregator” means a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the Reserve Bank of India under section 45JA of the Reserve Bank of India Act, 1934 and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

Amendment in definitions

- ▶ The definition of “non-taxable online recipient” and “online information and database access or retrieval services” was amended as hereunder:

Present	Proposed
“non-taxable online recipient” means any <u>Government, local authority, governmental authority, an individual or any other person not registered and receiving OIDAR services in relation to any purpose other than commerce, industry or any other business or profession</u> , located in taxable territory.	“non-taxable online recipient” means any unregistered person receiving OIDAR services located in taxable territory. Explanation - For the purposes of this clause, the expression “unregistered person” includes a person registered solely in terms of section 24 (vi).
“online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such	“online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such

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PoS of goods transportation services where supplier and recipient are in India

- ▶ As per proviso to Section 12(8) of the IGST Act, where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods. The said proviso was omitted.
- ▶ Accordingly, the place of supply in such cases will be:
 - ▶ In case of supply to registered recipient - location of the recipient;
 - ▶ In case of supply to unregistered recipient - location at which goods are handed over for transportation.

PoS of goods transportation services where either supplier or recipient is outside India

- ▶ As per Section 13(9) of the IGST Act, the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods. The above provision was omitted.
- ▶ Accordingly, the place of supply of such services shall be location of the recipient as per Section 13(2).

Supply

- ▶ Schedule III was amended from 1 February 2019, to include the following activities/transaction to be treated neither as supply of goods nor supply of services:
 - ▶ Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India (merchant trading/ out and out sales).
 - ▶ Supply of warehoused goods to any person before clearance for home consumption.
 - ▶ Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sales).

In order to remove the ambiguities regarding taxability of such transactions during the period 1 July 2017 to 31 January 2019, the above amendment was made retrospectively effective from 1 July 2017.

Clarifications

- ▶ Services supplied by a director to the company in his private or personal capacity are not taxable under RCM as per Entry 6 of Notification No. 13/2017 - Central Tax (Rate)
- ▶ Supply of food and beverages in cinema halls is taxable as restaurant service. However, if it is sold along with cinema ticket, it will be treated as composite supply of cinema exhibition service and taxed accordingly.

Miscellaneous

- ▶ CBIC vide Circular No. 182/14/2022-GST, issued

guidelines for verification of transitional credit availed by the taxpayers pursuant to the Supreme Court (SC) ruling⁶.

A special procedure is now prescribed for filing appeal against the order passed by proper officer in accordance with the above Circular.

- ▶ Further, a special procedure is notified which is to be followed by registered person engaged in manufacturing of specified tobacco related products.
- ▶ Registered person having aggregate turnover up to INR2 crores in FY 2022-23 have been exempted from filing annual return in GSTR-9 for the said year.

Comments

- a. Rule 96(10) of the CGST Rules prohibits certain class of exporters from availing the option to export goods or services on payment of IGST and claiming refund of the same (rebate route). After section 16(4) becomes operational, such class of exporters may be separately notified by the Government.
- b. Allowing composition dealers to supply through ECOs and relaxation in registration requirement for online suppliers may boost MSME sector
- c. Presently, persons supplying services through ECO and having aggregate turnover of less than registration threshold are already exempted from obtaining registration vide Notification No. 65/2017 - Central Tax.
- d. Though it is clarified that renting of immovable services provided by directors in their private or personal capacity is outside the ambit of Entry 6 of Notification No. 13/2017 - Central Tax (Rate), renting of residential dwelling by such directors to the company may still get covered under reverse charge through Entry 5AA of the said Notification.
- e. Whether the clarification in relation to supply of food by cinema halls can be extended to similar supplies made by airlines, supermarkets, etc., may need to be evaluated.

⁶ SLP(C) No. 32709 - 32710/2018

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