

EY Tax Alert

CBIC issues guidelines relating to investigation initiated under GST

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Executive summary

This Tax Alert summarizes a recent instruction¹ issued by the Central Board of Indirect Taxes and Customs (CBIC) stipulating guidelines for investigation under Goods and Services Tax (GST) to improve ease of doing business.

The key guidelines are:

- ▶ Prior written approval of the zonal Principal Chief Commissioner shall be required for initiation of investigation in the following matters:
 - ▶ Matters of interpretation seeking to levy tax for the first time
 - ▶ Big industrial house and major multinational corporations
 - ▶ Sensitive matters or matters with national implications
 - ▶ Matters already before the GST Council.
- ▶ Principal Commissioner must coordinate with other investigating offices when a taxpayer is simultaneously being investigated by the other investigating offices on a different subject matter. If feasible, only one investigating office should undertake investigation on all the subject matters.
- ▶ Where the issue is based on a matter of interpretation and the taxpayer is following prevalent trade practice as per their sector, it is recommended to make a reference to the relevant policy wing of the CBIC.
- ▶ When commencing an investigation of a listed company, public sector undertaking, corporation, government department or authority established by law, the CGST field formation should first issue an official letter, instead of summons to the designated officer of such entity.
- ▶ The letter or summons issued should disclose the specific nature of the inquiry being initiated or undertaken. The letter should not be vague, and should not call for information available digitally or on the online GST portal.

¹ Instruction No. 01/2023-24-GST (Inv.) dated 30 March 2024

Background

- ▶ Central Board of Indirect Taxes and Customs (CBIC) has considered the issue of implementing a standardized approach by CGST (Central Goods and Services Tax) field formations for conducting enforcement activities to ensure ease of doing business.
- ▶ Accordingly, it issued guidelines to be followed in CGST zones while undertaking investigation, subject to legal provisions or instructions issued in this behalf.

Initiation of Proceedings

- ▶ The Principal Commissioner will be responsible for developing and approving any intelligence, conducting search, completing investigation and relevant subsequent actions.
- ▶ Any information or intelligence which pertains to another CGST field formation, generated during an investigation should be forwarded to the respective CGST field formation or the Directorate General of Goods and Services Tax Intelligence (DGGI), as the case may be.
- ▶ Each investigation must be initiated only after the approval of the Principal Commissioner.
- ▶ However, in the following situations, the prior written approval of the zonal Principal Chief Commissioner shall be required for initiation of investigation and taking action:
 - ▶ Matters of interpretation seeking to levy tax/duty for the first time under Goods and Services Tax (GST) or Central Excise
 - ▶ Big industrial house and major multinational corporations
 - ▶ Sensitive matters or matters with national implications
 - ▶ Matters already before the GST Council.

The implication of such matters should be studied so as to have adequate justification for initiating investigation and taking action.

The concerned CGST field formation should also collect details regarding the prevalent trade practices and nature of transactions carried out from the stakeholders.

- ▶ Before obtaining approval for initiation of an investigation, it must be determined whether an inquiry on the same subject matter regarding the same taxpayer/ GSTIN has already been initiated by another investigative office or tax administration.

Dual Proceedings

- ▶ The Principal Commissioner must coordinate with other investigating offices when a taxpayer is simultaneously being investigated by the other investigating offices on a different subject matter. If feasible, only one investigating office should undertake investigation on all the subject matters.

- ▶ In situations where the Principal Commissioner has initiated an investigation related to a GSTIN within its jurisdiction, and the issue is relevant to some or all of that taxpayer's GSTINs registered under the same PAN in multiple jurisdictions and falling under DGGI purview, a comprehensive reference should be sent to their Zonal Principal Chief Commissioner.

Zonal Principal Chief Commissioner will then request the Principal Director General of DGGI to take up the matter in accordance with DGGI guidelines.

In cases where DGGI is not involved, the Principal Commissioner will share the details with each concerned zone within 30 days of the initiation of investigation.

Investigation Procedures

- ▶ During investigation, if the Principal Commissioner notices that the issue is based on a matter of interpretation entailing the demand of tax, and the taxpayer is found to be following a prevalent trade practice as per their sector, the Principal Chief Commissioner is recommended to make a reference to the relevant policy wing of the CBIC.
- ▶ When commencing an investigation of a listed company, public sector undertaking, corporation, or government department or authority established by law, the CGST field formation should first issue an official letter, instead of summons to the designated officer of such entity. Divergence from this practice at the initial stage must be backed by written reasons.
- ▶ The letter or summons issued should disclose the specific nature of the inquiry being initiated or undertaken. The letter should not be vague, and information available digitally or on the online GST portal should not be called for.
- ▶ Summons should be only issued as per the scope under section 70 of the CGST Act. Addressing letter or summon with context or content akin to a fishing inquiry is not acceptable.
- ▶ In issuing summons, the norm shall be of prior reasoned approval (of officer not below Deputy or Assistant Commissioner level) of the content of the summons to be printed by the summoning officer, including in terms of what is being sought and the time frame to be provided being reasonable for its compliance.
- ▶ The scanned copy of the statement recorded under summons and outcome of search or inspection should be uploaded to the e-office file.
- ▶ Investigations should conclude within one year, and should not be kept pending until limitation in law approaches. Show cause notice and closure report consequent to payment of dues by the taxpayer should not be delayed.

The closure report should include a brief self-explanatory narration of the issue and the period involved.

- ▶ Conclusion of investigation may also take the form of recording that investigation is not being pursued further as nothing objectionable was found in terms of matter investigated.

Grievance redressal

- ▶ The Principal commissioner should be proactive in a manner that prevents complaint arising in respect of the investigation and related work being undertaken within the jurisdiction.
- ▶ The Additional/Joint Commissioner in-charge of investigation is the Grievance Officer whom taxpayers may approach with grievance, if any, related to an ongoing investigation, for appropriate redress.

In case the reasonable grievance persists, the Principal Commissioner may consider meeting the taxpayer.

Comments

- a. The guidelines aim to bring transparency, efficiency and uniformity to the enforcement activities undertaken by GST authorities resulting in ease of doing business in India. Its implementation by the field formation would be key for its success.
- b. Earlier, instruction [Instruction No. 01/2022-23 GST-Investigation] was issued by CBIC with respect to deposit of tax during search, inspection or investigation.
- c. Separate instruction for issuance of summons [Instruction No. 03/2022-23] and for launching prosecution [Instruction No. 04/2022-23] were also issued by CBIC.

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon
Temple, Off SG Highway
Ahmedabad - 380 059
Tel: +91 79 6608 3800

Bengaluru

12th & 13th floor
"UB City", Canberra Block
No. 24, Vittal Mallya Road
Bengaluru - 560 001
Tel: +91 80 6727 5000

Ground Floor, 'A' wing
Divyasree Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru - 560 025
Tel: +91 80 6727 5000

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: +91 172 6717800

Chennai

Tidel Park, 6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: +91 44 6654 8100

Delhi NCR

Ground Floor
67, Institutional Area
Sector 44, Gurugram - 122 003
Haryana
Tel: +91 124 443 4000

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: +91 11 4731 8000

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: +91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: +91 40 6736 2000

Jamshedpur

1st Floor, Fairdeal Complex
Holding No. 7, SB Shop Area
Bistupur, Jamshedpur - 831 001
East Singhbhum Jharkhand
Tel: +91 657 663 1000

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: +91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: +91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: +91 22 6192 0000

5th Floor, Block B-2
Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: +91 22 6192 0000

Pune

C-401, 4th floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: +91 20 4912 6000

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