

CBIC notifies amendments and issues clarifications pursuant to the 48th GST council meeting recommendations

The Goods and Service Tax (GST) Council in its 48th meeting made various recommendations regarding measures for trade facilitation, streamlining GST compliances, etc. Further, to remove ambiguity and legal disputes on various issues, the GST Council recommended issuance of due clarifications. Pursuant to the above, the Central Board of Indirect Taxes and Customs (CBIC) has issued various notifications on 26 December 2022 and circulars on 27 December 2022.

Key amendments and clarifications:

- **Retrospective amendment w.e.f. 1 October 2022 for proportionate reversal of ITC**
 - If payment is not made to the supplier within 180 days of the invoice date, whether wholly or partially, the recipient shall be liable to pay or reverse the ITC proportionate to the amount not paid to the supplier along with the interest.
 - Earlier, there was uncertainty in the industry regarding whether full ITC needed to be reversed in cases of partial payment. This amendment would provide due clarity and relief to the taxpayers in case where a portion of taxable value is withheld due to certain reasons.
- **Manner of dealing with difference in liability reported in GSTR-1/IFF and GSTR-3B**
 - When a registered person's tax liability in Form GSTR-1/IFF exceeds the tax liability reported in Form GSTR-3B by the specified amount or percentage, a notice of such difference shall be given to that registered person in Part A of Form GST DRC-01B on the common portal and via email, with instructions to take the following actions within seven days:
 - Pay the differential tax liability, along with interest, through FORM GST DRC-03; or
 - Explain the aforesaid difference in tax payable on the common portal
 - The registered person shall either pay the different tax liability along with interest or furnish a reply incorporating reasons of differential unpaid tax in Part B of FORM GST DRC-01B electronically within the specified period.

Restriction on furnishing of GSTR-1/ IFF

A registered person to whom the above intimation has been issued shall not be allowed to furnish Form GSTR 1/IFF for a subsequent tax period unless they have either deposited the amount or have furnished a reply explaining the reasons.

It seems that the department intends to intervene only where the difference in liability reported in GSTR-1/IFF and GSTR-3B exceeds the specified percentage. Further, this approach will encourage the taxpayers to be more diligent towards proper filing of returns to avoid any restriction of further filing. However, it is important to see whether the revenue will accept taxpayers' justifications for the discrepancies between GSTR-1/IFF and GSTR-3B, as doing otherwise could open up a plethora of new litigations.

Mechanism for reversal of ITC in the case of non-payment of tax by the supplier and re-availment thereof

- If a recipient claims ITC in respect of invoice or debit note which has been reported by the supplier in its GSTR-1/IFF but has not furnished GSTR-3B, the supplier can furnish the same till 30 September following the end of financial year (FY) in which ITC has been availed. Otherwise, the recipient shall be liable to reverse such ITC while furnishing its GSTR-3B on or before 30 November following the end of such FY.
- If the recipient fails to reverse ITC before the above said timeline, such amount shall be payable along with interest under section 50. However, ITC may be re-availed post-furnishing of the GSTR-3B by the supplier.

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- **Particulars on tax invoice in case of supply by or through electronic commerce operator (ECO) or by a supplier of online information and database access or retrieval (OIDAR) services**
 - Irrespective of the value of such supply, a tax invoice shall contain the name and address of the recipient along with its PIN code and the name of the state and the said address shall be deemed to be the address on record of the recipient
- **Amendment in provisions for filing appeal to the appellate authority**

Particulars	Applicable provisions
Where the decision or order appealed against is uploaded on the common portal	<ul style="list-style-type: none"> • A final acknowledgement indicating the appeal number shall be issued in FORM GST APL-02 • The date of issue of the provisional acknowledgement shall be considered as the date of filing of the appeal
Where the decision or order appealed against is not uploaded on the common portal	<ul style="list-style-type: none"> • The appellant shall submit a self-certified copy of the order within seven days from the date of filing of FORM GST APL-01 • A final acknowledgement indicating the appeal number shall be issued in FORM GST APL-02 • The date of issue of the provisional acknowledgement shall be considered as the date of filing of the appeal • If self-certified copy is not submitted within seven days, the date of submission of such copy shall be considered as the date of filing of appeal

The amended provisions would provide due clarity on requirement of documents to be submitted before the appellate authority which would facilitate the timely processing of appeals and ease the compliance burden for the appellants.

- **Withdrawal of appeal**

Particulars	Applicable provisions
Time limit for filing application for withdrawal of appeal	<ul style="list-style-type: none"> • Any time before the issuance of SCN or order, whichever is earlier
Where the final acknowledgement issued	<ul style="list-style-type: none"> • The withdrawal of appeal would be subject to the approval of the appellate authority • Such withdrawal application shall be decided by the appellate authority within seven days

Earlier, there was no option under the GST law to withdraw an appeal application. Hence, this new provision would help in reducing the litigations both at the level of appellants and the appellate authorities.

- **Amendment in registration procedure**

- PAN shall be validated using OTP-based verification on PAN-linked mobile number and email addresses.
- In the case where a person who has undergone Aadhaar authentication is identified on the common portal for carrying out physical verification of places of business:
 - The registration shall be granted within thirty days of submission of the application, after physical verification of the place of business and documents as the proper officer may deem fit.
 - In case of any deficiency or clarification required in the application, the notice in FORM GST REG-03 may be issued within thirty days from the date of submission of the application
- For the state Gujarat, the registration application will be considered complete only after biometric-based Aadhaar authentication and the taking of a photograph of the applicant, as well as the verification of the original copy of the documents uploaded at one of the Facilitation Centres.

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- **Manner of dealing with difference in ITC availed in FORM GSTR-3B in comparison to FORM GSTR-2A for FY 2017-18 and 2018-19**
- There may be a difference in ITC claimed by the recipient in FORM GSTR-3B and that available in FORM GSTR-2A due to the non-reflection of supply in FORM GSTR-2A of the recipient in the below scenarios:
 - Where the supplier has filed FORM GSTR-3B, however, failed to file FORM GSTR-1 for a tax period
 - Where the supplier has filed both FORM GSTR-1 and GSTR-3B for a tax period, but failed to report a particular supply in FORM GSTR-1
 - Wrong reporting of supply as B2C instead of B2B supply in FORM GSTR-1 by the supplier
 - Reporting of supply with incorrect GSTIN of the recipient
- In respect to the above, the proper officer (PO) shall take the following actions:
 - Shall seek details from the recipient regarding all the invoices on which ITC availed in FORM GSTR 3B but not reflected in their FORM GSTR 2A
 - Shall ascertain fulfilment of the specified conditions of Section 16
 - Shall check whether ITC reversal is required
 - Shall check whether ITC has been availed within the time specified under section 16(4)
 - Shall take verification action to ensure that the supplier on such supply has paid tax

Action by PO in case of difference between the ITC claimed in GSTR-3B and available in GSTR-2A	
Exceeds INR 5 lakh	The PO shall ask the recipient to produce a certificate containing UDIN for the concerned supplier from the CA or the CMA
Upto INR 5 lakh	The PO shall ask the recipient to produce a certificate from the concerned supplier

- Applicability of instructions
 - Applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19
 - Applicable only to the ongoing proceedings in scrutiny/audit/ investigation, etc., for FY 2017-18 and 2018-19 and in those cases where any adjudication or appeal proceedings are still pending

- **Clarification in case of transportation of goods to a place outside India including by mail or courier, to a place outside India, where the supplier and recipient are in India**

Issue	Clarification
PoS	The concerned foreign destination where the goods are being transported would be the PoS
Type of supply	Since the location of the supplier is in India and the PoS is outside India, it would be considered as inter-state supply
Eligibility to avail ITC	The ITC provisions do not restrict credit availment by the recipient located in India if the PoS of the said input service is outside India. Thus, the recipient shall be eligible to avail ITC, subject to the fulfilment of other conditions
Reporting in GSTR-1	State code as '96-Foreign Country' would be mentioned

- **Applicability of e-invoicing w.r.t an entity**

Issue	Clarification
Is the exemption from generation of mandatory e-invoice available for the entity as a whole, or only available for certain supplies made by the said entity?	The entity as a whole is exempt from generating e-invoices. It is not restricted by the nature of the supply made by the said entity.

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- Clarification on taxability of No Claim Bonus (NCB) offered by insurance companies**
 - There is no supply provided by the insured to the insurance company in not lodging insurance claim during the previous year(s). Therefore, NCB cannot be considered as a consideration.
 - NCB is a permissible deduction u/s 15(3) for the purpose of calculating the value of the insurance services supplied by the insurance company to the insured. Where the deduction for NCB is provided in the invoice issued by the insurer, GST shall be levied on the actual insurance premium amount payable after deducting NCB.
- Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016 (IBC)**
 - It has been clarified that in cases where demand for recovery has been issued in Form GST DRC 07 / 07A and where proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues, the jurisdictional Commissioner will issue an intimation in Form GST DRC-25 reducing the amount of demand.
- Manner of filing refund application by unregistered persons (URP)**
 - A new functionality has been made available on the common portal, allowing the URP to take a temporary registration using their PAN and apply for a refund under the category 'Refund for Unregistered Person'.
 - The URP shall select the same state or union territory (UT) where the supplier, for whose invoice the refund is being claimed, is registered.
 - In case of supplier located in different states/UTs, temporary registration required in each concerned states/UTs.
 - The URP would undergo Aadhaar authentication and would enter bank account details which are in their name and has been obtained on their PAN.
 - Separate refund applications to be filed in respect of invoices issued by different suppliers.

- For the purpose of relevant date, the date of issuance of letter of cancellation of the contract/ agreement by the supplier will be considered as the date of receipt of the services by the applicant.
 - This is a welcoming circular for the URPs who were earlier unable to claim refund in case of premature cancellation of long-term service contracts or termination of long-term insurance policies.
- Clarification on applicability of provisions of section 75(2)**

Issue	Clarification
Time period for re-determination of the amount payable by the noticee	<ul style="list-style-type: none"> The PO is required to issue the order of redetermination of tax, interest, and penalty payable within two years from the date of communication of the direction from the appellate authority, appellate tribunal, or court, as the case may be
How will the PO recompute/redetermine the amount?	<ul style="list-style-type: none"> In case of bonafide cases (section 73), the SCN has to be issued within two years and nine months. Therefore, the PO may re-determine for so much amount, in respect of which SCN was issued within the specified time limit. If the SCN under section 74(1) was issued after more than two years and nine months, and the appellate authority finds that that the notice was invalid and should have been issued u/s 73(1), the entire proceeding shall have to be dropped being hit by the time limitation. In case of SCN issued for multiple years u/s 74(1), the amount payable u/s 73 will only be recalculated in relation to the FY for which the SCN was issued before expiry of the time period.