

EY Tax Alert

CBIC notifies effective date for amendments under GST and the changes in 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

The Central Board of Indirect Taxes & Customs (CBIC) notified ^[1] 1 February 2019 as effective date for the amended provisions of Central Goods and Services Tax Act (CGST), Integrated Goods and Services Tax Act (IGST), Union Territory Goods and Services Tax Act (UTGST) and GST (Compensation to States) Amendment Act.

The amendments in the provisions relating to new returns procedure shall come into force at a later date.

CBIC also issued a notification^[2] amending the CGST Rules to align them with the amended provisions of the Act. The key amendments to the Rules are summarized below:

- ▶ Manner and conditions for obtaining separate registration for multiple place of business within a state or union territory have been specified. Unutilized input tax credit in the existing registration can be transferred to such newly registered place of business.
- ▶ A single debit/ credit note can now provide reference to corresponding multiple tax invoices.
- ▶ At the time of claiming refund, the supplier making supplies to Special Economic Zone (SEZ) is required to submit declaration to the effect that no tax has been collected from recipient.

The Notification shall be effective from 1 February 2019.

^[1] Notification Nos. 2/2019 - Central Tax, 1/2019 - Integrated Tax, 1/2019 - Union Territory Tax, 1/2019 - Goods and Services Tax Compensation, all dated 29 January 2019

^[2] Notification No. 3/2019 - Central Tax dated 29 January 2019

Background

- ▶ Various amendments under the CGST, IGST, UTGST and GST (Compensation to States) Acts [hereinafter referred to as 'GST Amendment Acts'] received the Presidential assent on 29 August 2018.
- ▶ However, the provisions of the said Amendment Act were to come in force from a date to be notified by the Government.
- ▶ Based on decision taken by the GST Council in its 31st meeting held on 22 December 2018, the CBIC issued notifications¹ making the provisions of the GST Amendment Acts effective from 1 February 2019.
- ▶ It also amended Rules under GST to align them with the provisions of the Amendment Acts.
- ▶ The Notifications have been made effective from 1 February 2019.

Notifications

Various Notifications issued by CBIC are as follows:

Effective Date for GST Amendment Acts

- ▶ CBIC notifies all provisions of GST Amendment Acts to be effective from 1 February 2019, except the following provisions which have not yet been brought into force:

CGST (Amendment) Act, 2018	Description
8(b)	Reference to Section 43A in section 16(2)(c), which prescribes the new return filing procedure
17	Amendment to section 39 with reference to new return filing procedure
18	Section 43A - New return filing procedure
20(a)	Reference to Section 43A in section 49(2), which prescribes the new return filing procedure
28(b)(i) 28(c)(i)	Insertion of reference to sub-section (1) of Section 140 under Explanation 1 and 2, which defines the term "eligible duties" and "eligible duties and taxes" respectively.

¹Notification Nos. 2-6/2019 - Central Tax, 1-3/2019 - Integrated Tax, 1/2019 - Central Tax (Rate), Notification No. 1/2019 - Integrated Tax (Rate), Notification No. 1/2019 - Union Territory (Rate), 1/2019 - Union

Registration

Place of business

- ▶ Rules pertaining to separate registration for each business vertical have been replaced by separate registration for each place of business.
- ▶ Separate registration can be obtained for multiple places of business in a State or Union territory subject to following conditions:
 - ▶ The person has more than one place of business.
 - ▶ The person cannot opt for paying tax under the Composition scheme for any place of business unless it exercises the said option for all places of business.
 - ▶ Further, if any one business becomes ineligible to pay tax under Composition scheme, then the businesses in other places would also become ineligible.
 - ▶ Person in separately registered places shall pay tax on inter-unit supply and shall issue a tax invoice or a bill of supply, as the case may be for such supply.
- ▶ The registration for each place of business has to be made in Form GST REG-01 and rules for verification and grant of registration shall mutatis mutandis apply in such case.
- ▶ Further, at the option of the registered person, the unutilized input tax credit (ITC) in the existing registration can be transferred to the newly registered places of business. For this, Form GST ITC-02A is required to be furnished within 30 days of obtaining such separate registrations.
- ▶ Transfer of unutilized ITC to newly registered entities should be in the ratio of value of assets held by them at time of registration [irrespective of the fact that input tax credit on such assets has been availed or not].

Suspension of Registration

- ▶ The registration of person will be suspended when such person applies for cancellation of registration² or the proper officer initiates cancellation³ and proceedings for such cancellation of registrations are pending.
- ▶ The suspension will be effective from following date:
 - ▶ In case of application of cancellation by a registered person - Submission of application or date from which cancellation is sought, whichever is later.
 - ▶ In case of cancellation by the proper officer - date

Territory Tax, 1/2019 - Goods and Services Tax Compensation all dated 29 January 2019

² Under Section 29 of CGST Act read with Rule 20 of CGST Rules

³ Under Section 29 of CGST Act read with Rule 21 of CGST Rules

as determined by proper officer.

- ▶ Person whose registration is suspended shall neither make taxable supply nor is required to furnish any return under section 39.

Debit Notes and Credit Notes

A single debit/ credit note can now provide reference to corresponding multiple tax invoices. Earlier, separate debit/ credit note had to be issued in respect of each invoice.

Refund

- ▶ A registered person will have to furnish a declaration that no tax has been collected from SEZ at the time of claiming refund for supply of goods or services to SEZ.
- ▶ This is in line with the amendment to section 54 (8) (a) of the CGST Act which provides that proof of unjust enrichment must be furnished while claiming refund in relation to supplies to SEZ.

Reverse charge mechanism

- ▶ The Notification exempting the liability of a registered person from paying tax under reverse charge mechanism on making procurements from unregistered person has been rescinded with effect from 1 February 2019. This is done in view of the provisions of the Amendment Acts, basis which reverse charge in respect of supplies from unregistered persons will apply only to specified persons. However, no such class of persons has been notified so far.

GST Practitioners

- ▶ A person who was enrolled as sales tax practitioner or tax return preparer under the earlier law, has to pass specified examination to continue to be enrolled as GST Practitioner.
- ▶ The time limit of passing such examination has been extended from 18 months to 30 months from date of implementation of GST.
- ▶ Following additional activities can be performed by a GST practitioner:
 - ▶ Furnishing of information for generation of e-way bill
 - ▶ Furnishing of details of challan in Form GST ITC-04
 - ▶ Filing of application for amendment or cancellation of enrolment of unregistered transporter or godown/ warehouse owner or operator as per Rule 58.
 - ▶ Filing of intimation to pay tax under the composition scheme or withdraw from the said scheme subject to certain conditions.

Modification in Circulars

- ▶ In order to remove inconsistency with the amended GST law, the CBIC has issued Circular No. 88/07/2019-GST, dated 1 February 2019 which modifies earlier circulars as follows:
 - ▶ Circular No. 8/8/2017 dated 4 October 2017 is revised to provide that Letter of Undertaking (LUT) will be accepted for export of services, even if consideration is received in INR, wherever permitted by RBI.
 - ▶ Circular No. 38/12/2018 dated 26 March 2018 is modified in view of the amendments in CGST Act which empowers Commissioner to extend the period for return of inputs and capital goods from the job worker and restrict applicability of reverse charge on procurement from unregistered persons to notified class of persons only.
 - ▶ Circular No. 41/15/2018 dated 13 April 2018 is amended to allow payment of applicable tax and penalty on seizure of goods within 14 days from the date of issue of order of detention, instead of 7 days prescribed earlier.
- ▶ Circular No. 58/32/2018-GST issued on 4 September 2018, clarified that in case of wrongly availed CENVAT credit under earlier regime or CENVAT credit wrongly transitioned in GST, a taxpayer may reverse such credit through Table 4(B)(2) [ITC Reversed - Others] of GSTR-3B. The applicable interest and penalty has to be paid through column 9 of Table 6.1[Payment of tax-Interest] of GSTR-3B.
- ▶ The said earlier Circular is now modified to provide that the reversal of wrongly availed credit as specified above is no longer available to the taxpayer. Such liabilities may be discharged by the taxpayer in Form GST DRC-03[Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement]. The applicable interest and penalty is to be paid in Form GST DRC-03.

Composition Scheme

- ▶ Order No. 01/2019-Central Tax, dated 1 February 2019 has been issued to provide that the value of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account for the following:
 - ▶ For computing aggregate turnover to determine eligibility for Composition scheme.
 - ▶ For determining value of service, which a person opting for composition scheme may supply. Such person may supply services of value not exceeding 10% of the turnover in a State in the preceding financial year or INR 5 lakh, whichever is higher.

- ▶ The above order has been issued in supersession of Order No. 01/2017-Central Tax, dated 13 October, 2017, which clarified that a restaurant service provider shall not be ineligible to opt for Composition scheme for the reason that it also supplies any exempt services including services by way of extending deposits, loans or advances shall not be ineligible to opt for Composition scheme. Further, value of said services shall not be taken into account in computing aggregate turnover in order to determine its eligibility for composition scheme.

Other Changes

- ▶ The due date for filing Form GSTR-7 and GSTR-8 has been extended as tabulated below:

Sl. No	Forms	Earlier due date	Revised due date
1	GSTR-7	31 January 2019	28 February 2019 ⁴
2	GSTR-8	31 January 2019	7 February 2019 ⁵

- ▶ The due date for filing Form GST TRAN -1 for registered persons, who could not submit the said declaration within prescribed time on account of technical difficulties and whose cases have been recommended by the Council, has been extended from 31 January 2019 to 31 March 2019⁶.

Comments

CBIC vide Circular No. 87/06/2019-GST dated 2 January 2019 had already specified that it would not notify certain amendments relating to transitional provisions. The notifications are in line with this Circular. This is not likely to impact the retrospective amendment in regard to eligibility of cesses.

While the Rules for transfer of unutilized ITC from existing registration to newly registered place of business may benefit the taxpayer, there is still some ambiguity regarding the course of action to be taken by persons who were registered as business vertical but do not have separate place of business.

The taxpayer whose registration is suspended need not file return specified under Section 39 of the CGST Act. However, it does not seem to address the requirement to file Form GSTR 1 and GSTR 3B. From the Circular dated 26 October 2018, the intention of the Government though appears to absolve the taxpayer from filing any return other than a "final return" during the pendency of cancellation proceedings.

⁴ Notification No.7/2019 - Central Tax dated 31 January 2019

⁵ Order No. 02/2019-Central Tax dated 1 February 2019

⁶ Order No. 01/2019-GST dated 31 January 2019

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