

EY Tax Alert

CBIC issues clarification on refund and other matters under GST

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Executive summary

This Tax Alert summarizes recent circulars¹ issued by Central Board of Indirect Taxes and Customs (CBIC) providing clarification on refund and other matters under Goods and Services Tax (GST).

The clarifications are as follows:

- ▶ Process has been laid down in case of registered persons supplying textile goods and claiming refund due to inverted tax structure for the month in which lapsed input tax credit (ITC) was reversed. Reversal of ITC post due date of filing GSTR-3B for August 2018 will attract interest. Further, the refund shall be withheld till such ITC reversal is done and interest is paid on such delayed reversal.
- ▶ Process for refund of ITC has been specified in case of Merchant exporters procuring goods at concessional rate of tax.
- ▶ In case the amount claimed as refund is re-credited to electronic credit ledger after issuance of deficiency memo, taxpayers may re-submit refund application manually after correcting the deficiencies.
- ▶ Proper officers are instructed to exercise caution while granting new registration to a taxpayer whose earlier registration was cancelled due to non-compliance with the provisions of GST law.
- ▶ In case of death of the sole proprietor, the unutilized ITC can be transferred to the person being transferee or successor of the business.

¹Circular No. 94/13/2019-GST, 95/14/2019-GST and 96/15/2019-GST dated 28 March 2019

Background

- ▶ With a view to ensure uniformity in the implementation of the provisions of the law and facilitate efficiency in tax administration, Central Board of Indirect Taxes and Customs has issued circulars to provide clarification on various matters including the refunds under Goods and Services Tax (GST).

Circulars

Clarifications on refund related issues under GST²

- ▶ **Refund claim by registered persons on account of inverted tax structure**
 - ▶ While the Notification No. 20/2018 - Central tax (rate) dated 26 July 2018 allowed refund in case of inverted tax structure for certain textile goods, it also provided that the accumulated credit lying unutilized on inward supplies received up to 31 July 2018 shall lapse.
 - ▶ While claiming the refund, certain registered persons reversed the accumulated credit through Form GSTR-3B filed for the month of August 2018 or subsequent month.
 - ▶ However, due to validation check on the common portal which prevents the value of ITC in Statement 1A of Form GST RFD-01A from exceeding the amount of ITC availed in Form GSTR-3B as reduced by the value of ITC reversed for the relevant period, it became difficult for the tax payer to claim full amount of refund of accumulated ITC.
 - ▶ The circular clarifies that such refund is required to be claimed under the head "any other" instead of "refund claim of unutilized ITC on account of accumulation due to inverted tax structure" in Form GST RFD-01A. This will be followed by calculation of refund amount by the proper officer, debiting the amount from electronic credit ledger and issuance of refund order.
 - ▶ The circular further clarifies that if the registered persons have not yet reversed ITC, they may reverse the same through Form GST DRC-03 instead of Form GSTR-3B.
 - ▶ Reversal of lapsed ITC after the due date of filing Form GSTR-3B for the month of August 2018 will attract interest.
 - ▶ Refund shall be granted only after lapsed credit is reversed along with payment of interest, as applicable.
- ▶ Merchant exporter, who has procured goods at concessional rate, can claim refund of accumulated ITC under Rule 89(4B) of Central Goods and Services Tax (CGST) Rules, 2017 under the category "any other" instead of "refund claim of unutilized ITC on account of exports without payment of tax" in Form GST RFD-01A.

- ▶ The circular also provides the procedure to be followed where the amount of ITC claimed as refund is re-credited to electronic credit ledger due to issuance of deficiency memo and the claimant cannot file a fresh application for the same period.
- ▶ In such cases, the claimant may resubmit the refund application manually in Form GST RFD-01A after correcting the deficiencies pointed out in the deficiency memo, using the same Application Reference Number.
- ▶ The proper officer shall then proceed to process the refund application as per the existing guidelines.
- ▶ Where the proper officer is satisfied that the whole or any part of the claimed amount is payable as refund, he shall request the taxpayer to debit the same amount from his electronic credit ledger through Form GST DRC-03. Once proof of debit is received by the proper officer, he shall proceed to issue the refund order in Form GST RFD-06 and payment advice in Form GST RFD-05.

Application verification for grant of new registration³

- ▶ Section 29(2) of the CGST Act, 2017 authorizes proper officer to cancel registration of the registered person *suo moto* for the reasons specified therein.
- ▶ Exercising such power, the proper officer has cancelled some of the registrations. It is noticed that such persons, who continue to carry on business and therefore are required to have registration under GST, are not applying for revocation of cancellation of registration. Instead, they are applying for the new registration.
- ▶ The proper officers are instructed to exercise due caution while processing the new application for registration submitted by the taxpayer.
- ▶ The data may be verified by fetching the details of registration taken on the PAN (Permanent Account Number) mentioned in the new application vis-à-vis cancellation of registration obtained on the same PAN.
- ▶ Further, if required, information submitted by applicant in Form GST REG-01 regarding details of proprietor, partner/Karta/Managing Directors and whole time Director/Members of Managing Committee of Associations/Board of Trustees etc. may be analyzed vis-à-vis any cancelled registration having same details.
- ▶ While considering the application for registration, the proper officer shall ascertain if the earlier registration was cancelled on account of non-compliance with the specified provisions of CGST Act. If the non-compliance continues, the new application for registration may be rejected by the proper officer.

² Circular No. 94/13/2019-GST dated 28 March 2019

³ Circular No. 95/14/2019-GST dated 28 March 2019

Transfer of ITC in case of death of sole proprietor⁴

- ▶ Section 18(3) of the CGST Act provides for transfer of ITC under specified circumstances like sale, merger, demerger, transfer of business.
- ▶ Section 29(1) of CGST Act deals with cancellation of registration and as per sub-clause (a), reason for transfer of business includes "death of the proprietor".
- ▶ Doubts have been raised whether section 18(3) provides for transfer of ITC which remains unutilized, to the transferee in case of death of the sole proprietor.
- ▶ The circular clarifies that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.
- ▶ Thus, in case of death of sole proprietor if the business is continued by any person being transferee or successor, the ITC which remains unutilized in the electronic credit ledger is allowed to be transferred to the transferee as per the provisions of CGST Act and in the manner prescribed in the circular.

Comments

Difficulty in claiming refund of unutilized credit in certain scenarios have been addressed effectively by the Government. However, speedy disposal of such refund claims involving manual scrutiny of documents and other procedure, will be critical in addressing the concern of tax payer.

While the circular emphasizes on reversal of lapsed ITC and applicability of interest in case of delayed reversal, Writ petition challenging the notification requiring lapsing of unutilized input tax credit due to inverted tax structure in case of textile industry is pending before the High Court.

Instructions issued to proper officers to cross verify PAN and other registration related information while processing new registration applications may help avoid non-compliance and protect the interest of exchequer.

⁴ Circular No. 96/15/2019-GST dated 28 March 2019

Our offices

Ahmedabad

2nd floor, Shivalik Ishaan Near C.N.
Vidhyalaya Ambawadi
Ahmedabad - 380 015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

Bengaluru

6th, 12th & 13th floor "UB City",
Canberra Block No.24 Vittal Mallya
Road Bengaluru - 560 001
Tel: +91 80 4027 5000
+91 80 6727 5000
+91 80 2224 0696
Fax: +91 80 2210 6000

Ground Floor, 'A' wing Divyasree Chambers

11, O'Shaughnessy Road Langford
Gardens Bengaluru - 560 025
Tel: +91 80 6727 5000
Fax: +91 80 2222 9914

Chandigarh

1st Floor, SCO: 166-167 Sector 9-C,
Madhya Marg Chandigarh - 160 009
Tel: +91 172 331 7800
Fax: +91 172 331 7888

Chennai

Tidel Park, 6th & 7th Floor
A Block (Module 601,701-702) No.4,
Rajiv Gandhi Salai Taramani, Chennai -
600 113
Tel: +91 44 6654 8100
Fax: +91 44 2254 0120

Delhi NCR

Golf View Corporate Tower B Sector 42,
Sector Road Gurgaon - 122 002
Tel: +91 124 464 4000
Fax: +91 124 464 4050

3rd & 6th Floor, Worldmark-1 IGI Airport Hospitality District Aerocity, New Delhi - 110 037

Tel: +91 11 6671 8000
Fax +91 11 6671 9999

4th & 5th Floor, Plot No 2B

Tower 2, Sector 126
NOIDA - 201 304
Gautam Budh Nagar, U.P.
Tel: +91 120 671 7000
Fax: +91 120 671 7171

Hyderabad

Oval Office, 18, iLabs Centre Hitech
City, Madhapur Hyderabad - 500 081
Tel: +91 40 6736 2000
Fax: +91 40 6736 2200

Jamshedpur

1st Floor, Shantiniketan Building
Holding No. 1, SB Shop Area Bistupur,
Jamshedpur - 831 001
Tel: +91 657 663 1000
BSNL: +91 657 223 0441

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: +91 484 304 4000
Fax: +91 484 270 5393

Kolkata

22 Camac Street 3rd
Floor, Block 'C' Kolkata -
700 016
Tel: +91 33 6615 3400
Fax: +91 33 2281 7750

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg Dadar
(W), Mumbai - 400 028
Tel: +91 22 6192 0000
Fax: +91 22 6192 1000

5th Floor, Block B-2 Nirlon

Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: +91 22 6192 0000
Fax: +91 22 6192 3000

Pune

C-401, 4th floor Panchshil
Tech Park Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: +91 20 6603 6000
Fax: +91 20 6601 5900

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