

# EY Tax Alert

## GST Amendment Bills passed by Lok Sabha

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 Ernst & Young advisor.

### Executive summary

The Monsoon Session of the Parliament commenced on 18 July 2018 and concluded on 10 August 2018.<sup>[1]</sup> Both Houses of the Parliament were adjourned *sine die*.

The following bills were introduced and passed by the Lok Sabha:

- ▶ The Central Goods and Services Tax (Amendment) Bill, 2018
- ▶ The Integrated Goods and Services Tax (Amendment) Bill, 2018
- ▶ The Union Territory Goods and Services Tax (Amendment) Bill, 2018
- ▶ The Goods and Services Tax (Compensation to States) Amendment Bill, 2018

Most of the amendments in the above Bills are in line with the changes proposed<sup>[2]</sup> earlier by the government and put in public domain for comments before being approved by the GST Council.

The GST Amendment Bills sent to Rajya Sabha for its recommendations are not likely to be returned to Lok Sabha as the monsoon session of Parliament has concluded. The Bills will be deemed to have been passed by both the Houses upon the expiration of 14 days, in the form in which they were passed by the Lok Sabha.

All States will now have to make similar amendments to their State Goods and Services Tax Act. The amendments will come into force from a date to be notified by the government.

<sup>[1]</sup> Source: Press Release issued by Ministry of Parliamentary Affairs, dated 10 August 2018.

<sup>[2]</sup> Refer our earlier Tax Alert, dated 13 July 2018.

## Background

- ▶ The Parliament, during its monsoon session, has cleared the four bills to amend the GST Law. The said bills are:
  - ▶ The Central Goods and Services Tax (Amendment) Bill, 2018 (CGST Bill)
  - ▶ The Integrated Goods and Services Tax (Amendment) Bill, 2018 (IGST Bill)
  - ▶ The Union Territory Goods and Services Tax (Amendment) Bill, 2018
  - ▶ The Goods and Services Tax (Compensation to States) Amendment Bill, 2018
- ▶ These amendments, except for the ones listed below, are in line with the earlier proposed amendments by CBIC which had been put in public domain for stakeholders' comments.
- ▶ The proposals were later approved by the GST Council and the cabinet before being introduced in the Lok Sabha.
- ▶ The bills were passed by the Lok Sabha on 9 August 2018.

## Further changes in Amendment Bills introduced and passed by the Lok Sabha

### CGST Bill

#### Interest on reversal of input tax credit due to non-payment to supplier within 180 days, retained

- ▶ It was earlier proposed to remove the interest liability if the recipient failed to pay to the supplier within 180 days from date of issue of invoice. Only input tax credit availed had to be reversed and added to the output tax liability.
- ▶ Such amendment to withdraw 'interest' is not present in the CGST Bill. Thus, the provision to pay interest in case of non-payment to supplier within 180 days has been retained.

#### Input tax credit (ITC)

- ▶ In the CGST Bill, the specific exclusion from blocked ITC in respect of 'motor vehicles' for transportation of goods has been removed.
- ▶ This change suggest that ITC in respect of motor vehicles having the seating capacity of not more than thirteen persons, if used for transportation of goods, may not be available.
- ▶ The earlier proposed amendment allowing ITC in respect of motor vehicles used in transportation of money for/by a banking company/financial institution has been omitted.
- ▶ A new provision has been added in the CGST Bill to allow

ITC for services of general insurance, servicing, repair and maintenance when received by a taxable person engaged in:

- ▶ Manufacture of such motor vehicles, vessels or aircraft
- ▶ Supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him.
- ▶ The term leasing has been added in Section 17(5)(b)(i) thus providing that ITC will not be available in case of leasing of motor vehicles, vessels or aircraft except when used for the specified purposes.

The amendments proposed earlier covered only renting and hiring.

#### Registration

- ▶ The CGST Bill has replaced "business vertical wise" registration with "place of business wise" registration by providing that a person having multiple places of business in a state may obtain separate registration for each such place of business, subject to conditions prescribed.
- ▶ Earlier, the proposal was to give an option to taxpayer to obtain separate registration for each place of business in addition to the option of taking separate registration for each business vertical.
- ▶ Accordingly, the CGST Bill has omitted the definition of business vertical.
- ▶ A separate amendment was proposed to allow a person having multiple units in a Special Economic Zone (SEZ) to take separate registration for each such unit.
- ▶ However, there is no such proposal in the CGST Bill thus implying that the amendment allowing separate registration for each place of business will also apply in case of separate registration for multiple units in SEZ.
- ▶ The CGST Bill has also inserted a proviso giving power to Government to increase the applicable registration threshold of INR 10 lakh for special category states on the basis of a request from such states.

#### Detention, seizure of goods and conveyances in transit

- ▶ The CGST Bill has increased the time period from 7 days to 14 days for payment of tax and penalty in case of detention or seizure of goods in transit, before confiscation proceedings are initiated.

#### Retrospective amendment to disallow transition of Cesses

- ▶ The CGST Bill has retained the proposed amendment for disallowing transition of credit of cesses like Krishi Kalyan Cess (KKC) and Education cess from erstwhile regime. This amendment has been given retrospective effect.

## Other changes in the CGST Bill

- ▶ The CGST Bill corrects the earlier drafting error in the proposed amendment which suggested that the limit of INR 5 lakh or 10% of the turnover for supply of services for composition scheme was also applicable to restaurant services.
- ▶ CGST Bill has made various amendments in Section 39 of CGST Act relating to furnishing of returns and prescribe procedure for quarterly filing of returns with monthly payment of taxes.

## IGST Bill

### “Business vertical” removed from distinct persons

- ▶ Presently, Explanation 1 to Section 8(2) of the IGST Act treats an establishment in a state and any other establishment being a business vertical registered within that same state as establishments of distinct persons.
- ▶ The IGST Bill omits the words ‘being a business vertical’ to bring provisions in line with the substitution of “business vertical wise” registration with “place of business wise” registration, under CGST Act.

### Reverse charge mechanism (RCM)

- ▶ Section 5(4) of the IGST Act has been amended by the IGST Bill to provide for RCM in line with the provisions under CGST Bill.
- ▶ As per the amended provisions, the government may notify the class of registered persons who would be liable to pay tax under RCM in case of procurement of goods or services from an unregistered supplier.

### Pre-deposit for appeals

- ▶ The IGST Bill sets a cap of INR 50 crore for pre-deposit in case of appeal before Appellate Authority and INR 100 crore for appeal before Appellate Tribunal thus bringing the provisions in line with change in pre-deposit limit under CGST Bill.

## Way Forward

- ▶ The GST Amendment Bills sent to Rajya Sabha for its recommendation, are not likely to be returned to Lok Sabha, as the monsoon session of Parliament has concluded.
- ▶ The Bills will be deemed to have been passed by both the Houses at the expiration of 14 days, in the form in which they were passed by the Lok Sabha.<sup>1</sup>

<sup>1</sup> As per Article 109 (5) of the Constitution of India, if a Money Bill passed by the Lok Sabha and transmitted to the Rajya Sabha for its

- ▶ All the States will have to make similar amendments in their respective SGST Act.
- ▶ Presidential assent to the Bills is also awaited.
- ▶ The amendments will come into force from a date to be notified by the Government.

## Comments

The omission of registration for separate business vertical could lead to a situation where a taxpayer may not be able to take separate registration if there is no separate place for its different businesses. This may lead to difficulty for businesses which have already opted for such registration.

It is not clear as to why the amendment earlier proposed to do away with interest liability in case of non-payment to supplier within 180 days does not find a place in the CGST Bill. This will once again add to the burden of the taxpayer, particularly in cases where the supplier is paid subsequently, since there is no provision to reverse such interest.

Retrospective amendment for not allowing transition of KKC and Education cess may have an adverse impact on industry considering the huge quantum of credits involved and the fact that companies would have already transitioned such credits.

Also, the reading of the amendment to transitional provisions suggests that CENVAT credit of Service tax may not be allowed to be transitioned, though this cannot be the intention of law makers.

Amendment widening the scope of ITC, may benefit insurance companies as they will be able to claim ITC of reinsurance services in respect of motor vehicles, vessels and aircrafts.

recommendations is not returned to the Lok Sabha within fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period.

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