

# EY Tax Alert

## Proposed amendments to GST law released for public comments

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 government has proposed certain amendments in the Central Goods and Services Tax (CGST) Act 2017, Integrated Goods and Services Tax Act (IGST), 2017 and the GST (Compensation to States) Act, 2017. The proposed amendments have been put in public domain for inviting comments from the stakeholders by 15 July 2018.

Some of the important amendments proposed are:

- ITC to be allowed with reference to activities which are treated neither as a supply of goods nor a supply of services.
- Persons providing services up to 10% of turnover in the preceding financial year or INR 5 lakh, whichever is higher, will be able to opt for composition scheme.
- A consolidated credit or debit note can be issued in respect of multiple invoices without linking them to individual invoices.
- Registered persons will be able to amend GST returns to rectify any mistakes.
- The place of supply of services of outbound freight, where both supplier and recipient are in India, will be the place of destination of such goods.
- Provision to pay interest in case of reversal of ITC for non-payment to supplier within 180 days to be withdrawn.

## Background

- The government has proposed certain amendments in CGST Act, IGST Act and the GST (Compensation to States) Act, 2017.
- These amendments have been made available in public domain in order to invite comments / feedback from various stakeholders by 15 July 2018.

## Key proposed amendments in CGST Act

### Supply

- Clause (d) of the definition of supply under Section 7(1) which deals with classification of certain specified activities either as supply of goods or services to be omitted and to be inserted as a new sub-section under Section 7.
- As per the existing provisions of Entry 4 of Schedule I to CGST Act, import of services by a taxable person even if made without consideration from a related person or any of his other establishment outside India, is treated as supply. The amendment is proposed to delete the word 'taxable' thereby making all persons, whether having any taxable supply or not, liable to pay tax on such import of services.
- The following will be treated neither as a supply of goods nor a supply of services (amendments proposed in Schedule III to CGST Act):
  - Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into the taxable territory.
  - Supply of warehoused goods before clearance for home consumption and high sea sales

### Reverse charge mechanism

- The current provision dealing with liability to pay tax on reverse charge for procurement from unregistered persons is proposed to be omitted.
- It is also proposed to insert an enabling provision for the government to notify a class of registered persons who would be liable to pay tax on reverse charge basis in case of procurement of goods or services from an unregistered supplier.

### Composition scheme

- The threshold turnover for opting composition scheme to be increased from INR 1 crore to INR 1.5 crore.
- Persons who provide services of value up to 10% of turnover in the preceding financial year in a state or INR 5 lakh, whichever is higher, will be able to opt for composition scheme.

### Input Tax Credit (ITC)

- If services are provided by a supplier to any other person on the direction and on account of a registered person, then it will be deemed that such registered person has received the services.
- If the recipient fails to pay to the supplier within 180 days from date of issue of invoice, then only Input tax credit (ITC) availed will be added to the output tax liability. It is proposed to remove the interest liability in such cases.
- Activities specified in Schedule III (other than sale of land and building) to be excluded from the definition of exempt supply. Thus, ITC will be available on such activities.
- ITC to be restricted in respect of motor vehicles for transportation of persons, having approved seating capacity up to 13 persons, vessels and aircrafts. Currently, the restriction is in respect of all motor vehicles subject to certain exceptions.
- ITC to be allowed if it is obligatory for an employer to provide goods or services to its employees under any law for the time being in force.

### Registration

- E-commerce operators, not required to collect tax at source, will not be required to obtain registration if their aggregate turnover does not exceed INR 20 lakh.
- 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 option was available only in case of separate business verticals.

### Tax invoice, credit and debit notes

- Consolidated credit note or debit note (as the case maybe) can be issued in respect of multiple invoices without linking them to individual invoices.

### Returns

- The registered persons will be able to revise the GST return by filing an amendment return.
- A new section 43A to be inserted to provide the new return filing procedure. As a part of the procedure, it is proposed that the supplier and recipient shall be jointly and severally liable to pay tax or reverse credit under certain circumstances.

### Payment of tax

- Credit of State GST/Union Territory GST to be utilized for payment of IGST only when the balance of the ITC on account of CGST is not available.
- Similarly, a taxpayer can utilize credit of CGST, SGST/UTGST, only after exhausting the entire credit

available on account of IGST.

#### Refunds

- The principle of unjust enrichment to apply in case of refund claim arising out of supplies of goods or services made to Special Economic Zone unit or developer.

#### Recovery of tax

- In case of default in payment of tax by a registered person, recovery can be made from distinct persons i.e., other establishments having same Permanent Account Number.

#### Appeals to Appellate Authority and Appellate Tribunal

- A ceiling of INR 25 crore and INR 50 crore in respect of pre-deposit to be prescribed for filing an appeal before the Appellate Authority and Appellate Tribunal respectively.

#### Transitional provisions

- Transitional credit of only eligible duties can be carried forward in the GST regime.
- Further, eligible duties and taxes will not include any cess not specified in Explanation 1 and 2 which defines "eligible duties" and "eligible duties and taxes", respectively.

#### Job work

- The time period of one year and three years, for return of inputs and capital goods from the job worker can be extended by the Commissioner for a further period not exceeding one year and two years respectively.

## Key proposed amendments in IGST Act

#### Export of services

- Consideration can be received in INR if permitted by the Reserve Bank of India, for a transaction to qualify as export of services. Currently, consideration should be received only in convertible foreign exchange.

#### Place of supply of services

- The place of supply of services by way of transportation of goods to a place outside India, where both supplier and recipient are located in India, will be the place of destination of such goods.
- The place of supply of services in respect of goods which are temporarily imported into India for any treatment or process, and are exported after such treatment/ process without being put to any other use in India, will be the location of recipient i.e., outside India.

## Comments

The effort of the government in addressing concerns of the industry through changes in GST law is commendable.

The move by the government requesting public comments on the proposed amendments will ensure that consequences and impact of the amendments will be highlighted and necessary tweaks and corrections can be made before the law is amended. This move further supports with the government's initiative to increase the ease of doing business.

While many of the proposed amendments are taxpayer-friendly, which are in wake of various representations of stakeholders, some are clarificatory in nature or seek to correct drafting errors. Retrospective applicability of such amendments in certain cases might provide much relief to the taxpayers.

Various changes proposed in the provisions of ITC may provide a significant relief to the industry by way of reduction in tax cascading.

While the provisions are proposed to enable the new return filing procedure as proposed by the Committee and approved by the GST Council, the detailed mechanism may be critical from compliance perspective.

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