

# Union Budget 2022-23

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**PAKSH LEGAL**

INNOVATE – DISCOVER – THRIVE

Changes related to GST Act

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# Executive Summary of GST Changes

1. Registered person is entitled to the credit auto-generated in Form GSTR-2B and which is shown as available.
2. Circumstances providing for ITC to be shown as "Not available" in Form GSTR-2B has been provided now.
3. There shall be no two-way communication between the supplier as well as recipient as provided in original scheme of GST law.
4. GSTR-1 can be filed only if GSTR-1 for previous tax period has been filed.
5. Filing of Form GSTR-1 has been made condition precedent for filing of Form GSTR-3B.
6. **Vendor is God:** The timely compliance ensures smoothness of operations at recipient's end.
7. **Time limits** for taking credit, issuing credit notes and doing rectified has been extended to 30.11 of the following financial year.
8. In case of non-payment of tax by corresponding supplier, the credit has to be reversed with interest. This credit can be **re-availed** as and when the corresponding supplier pays tax.

# Executive Summary of GST Changes

9. Rate of interest is reduced to 18% w.r.e.f. 01.07.2017 u/s 50(3).
10. Relevant date is specified for claiming the refund on account of supplies made to SEZ.
11. Balance lying in electronic cash ledger can now be transferred to other GSTINs of the same person.
12. Provisions related to matching of credit has been omitted.

**REGISTERED PERSON  
IS ENTITLED TO  
ITC COMMUNICATED AS AVAILABLE  
IN FORM GSTR-2B**

**- A new Condition proposed**

## Section 16. Eligibility and conditions for taking input tax credit. (Amendment highlighted in grey tab)

(2) Notwithstanding anything contained in this section, no registered person shall be **entitled to** the credit of any input tax in respect of any supply of goods or services or both to him unless,—

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- (aa) *the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;*
- (b) he has received the goods or services or both.

.....

### New clause proposed to be inserted

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

- (c) subject to the provisions of section 41 [~~or section 43A~~], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39:

# Amendments in CGST Act, 2017

## **Section 16** Memo to the Finance Bill, 2022

Clause 99 seeks to amend section 16 of the Central Goods and Services Tax Act, 2017 by inserting a new clause (ba) in sub-section (2) thereof, so as to provide that input tax credit with respect to a supply may be availed only when such credit has not been restricted in the details communicated to the registered person under section 38.

## Section 16 Important takeaways

1. Form GSTR-2A as well as Form GSTR-2B communicates the details of input tax credit.
2. Existing Form GSTR communicates the details in two parts, - A. ITC available summary (Table 3), and B. ITC not available summary (Table 4)
3. As per instruction number 2(b) to Form GSTR-2B, the GSTN portal communicates the credit as not available in following circumstances:
  - a. Invoice or debit notes furnished by corresponding supplier in Form GSTR-1 after the due date specified under section 16(4).
  - b. Invoice or debit notes where supplier's GSTIN and place of supply are in the same state while recipient is in another State.
4. Proposed section 38(2) suggests the provisions related to cases where Form GSTR-2B would communicate that the credit is not available. It also provides that certain class of persons can be prescribed by way of rules. A list of these cases is given in subsequent slides.
5. Therefore, existing categorisation of credit as “not available” does not hold any legal backing in terms of section 38 of the CGST Act. By the time effect is given to these provisions, instructions to Form GSTR-2B will undergo change as also the GSTN portal.

## Section 16 Important takeaways

1. The ITC is based on timely compliance as well as payment of tax by the vendor.
2. ITC is available only if the invoices are appearing in Form GSTR-2B. In other words, supplier has to file its GSTR-1. However, the legislature has been vested with the powers to impose conditions as well restrictions in filing Form GSTR-1.
3. If the vendor is being restricted from filing the Form GSTR-1, then the recipient is being penalised to a great extent.
4. This system cannot be allowed to function unless the Government starts giving GST Compliance Rating of the registered persons which will assist them in deciding/ planning the transactions to be executed.
5. Form GSTR-2A is also required to be amended to incorporate the column “Date of filing of Form GSTR-3B” so as to ensure compliance with provisions of section 16(2)(c) which would otherwise become a non-executory provision at recipient’s end.

## Section 16. Eligibility and conditions for taking input tax credit. (Amendment highlighted in grey tab)

(4) A registered person shall not be **entitled to take** input tax credit in respect of any invoice or debit note for supply of goods or services or both after the **[thirtieth day of November]** following the end of financial year to which such invoice or [\* \* \*] debit note pertains or furnishing of the relevant annual return, whichever is earlier:

\*The words "invoice relating to such" omitted by the Finance Act, 2020, *w.e.f. 1-1-2021*.

### Substitution proposed

The words “due date of furnishing of the return under section 39 for the month of September” are proposed to be substituted by “thirtieth day of November”.

# Amendments in CGST Act, 2017

## **Section 16** Memo to the Finance Bill, 2022

It further seeks to amend sub-section (4) so as to provide that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note after the thirtieth day of November following the end of the financial year to which such invoice or debit note pertains, or furnishing of the relevant annual return, whichever is earlier.

## Section 16 Important takeaways

1. The date of taking the credit has been extended.
2. Expression used prior to amendment was “due date of furnishing of the return under section 39 for the month of September” which was usually confused between 30.09 or 20.10/22.10/24.10, as the case may be. Since the date has now been proposed to be mentioned, the disputes as regarding date of taking the credit would come to an end.
3. However, it is notable that the GST authorities have taken the view that date of taking the credit is the date of filing the return which comes either on 20 or 22 or 24<sup>th</sup> day of the month. Hence, there may be anomalies in manner of executing the compliance with this provision.
4. Above view is without prejudice to the view that date of taking the credit is the date of taking it in books of account. On this account, the proposed amendment is clarificatory as earlier the date of taking the credit in books of account was confused between 30.09 and 20/22/24.10. Now, the credit can be taken in books of account by 30.11.

# CANCELLATION OR SUSPENSION OF REGISTRATION

- Rationalization of provisions

## Section 29. Cancellation or suspension of registration

(Amendment highlighted in grey tab, font in blue states substituted language)

- (2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—
- a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
  - b) a person paying tax under section 10 has not furnished returns ~~for three consecutive tax periods~~ [the return for a financial year beyond three months from the due date of furnishing the said return]; or
  - c) any registered person, other than a person specified in clause (b), has not furnished returns for ~~a continuous period of six months~~ [such continuous tax period as may be prescribed]; or
  - d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
  - e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

## Section 29 Memo to the Finance Bill, 2022

Clause 100 seeks to amend clause (b) of sub-section (2) of section 29 of the Central Goods and Services Tax Act so as to provide that the registration of a person paying tax under section 10 is liable to be cancelled if the return for a financial year has not been furnished beyond three months from the due date of furnishing of the said return.

It further seeks to amend clause (c) of the said sub-section (2) so as to provide for prescribing continuous tax periods for which return has not been furnished, which would make a registration liable for cancellation, in respect of any registered person, other than a person specified in clause (b) thereof.

## Section 29 Important takeaways

1. A composition dealer is required to file the return for a financial year in Form GSTR-4 on or before 30<sup>th</sup> day of April.
2. This return was earlier filed on quarterly basis. From FY 2019-20, it was made annual. [NN 21/2019-CT dated 23.04.2019 refers]
3. However, the clause related to cancellation of registration was not amended.
4. Therefore, the amendment is corrective in nature.
5. In another cases, failure to furnish returns for a continuous period of six months attracted the cancellation or suspension of registration.
6. There is a difference between expression “tax period” and “month”.
7. The expression has now been improvised to “tax period” and the periodicity is proposed to be provided by way of Rules.

# RATIONALISATION OF TIME LIMITS

**- 30<sup>th</sup> November is new deadline**

## Section 34. Credit and debit notes

(Amendment highlighted in grey tab, font in blue state substituted language)

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than **September** thirtieth day of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

## Section 34 Memo to the Finance Bill, 2022

Clause 101 seeks to amend sub-section (2) of section 34 of the Central Goods and Services Tax Act so as to provide for thirtieth day of November following the end of the financial year, or the date of furnishing of the relevant annual return, whichever is earlier, as the last date for issuance of credit notes in respect of any supply made in a financial year.

# RATIONALISATION OF RETURNS

- GSTR-1

## Section 37. Furnishing details of outward supplies.

(Amendment highlighted in grey tab, font in blue state substituted language)

- (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, **subject to such conditions and restrictions and** in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details [**shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies**]:

~~Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:~~

### Language before substitution:

“shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed”

## Section 37. Furnishing details of outward supplies.

(Amendment highlighted in grey tab)

~~(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.~~

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period ~~and which have remained unmatched under section 42 or section 43~~, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after ~~[the thirtieth day of November] furnishing of the return under section 39 for the month of September~~ following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier:

## Section 37. Furnishing details of outward supplies.

(Amendment highlighted in grey tab)

(4) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods.

## Section 37 Memo to the Finance Bill, 2022

Clause 102 seeks to amend sub-section (1) of section 37 of the Central Goods and Services Tax Act so as to provide for prescribing conditions and restrictions for furnishing the details of outward supply and the conditions and restrictions as well as manner and time for communication of the details of such outward supplies to concerned recipients.

It further seeks to omit sub-section (2) and first proviso to sub-section (1) so as to do away with two-way communication process in return filing.

It also seeks to amend sub-section (3) so as to remove reference to unmatched details under section 42 or section 43, as the said sections are proposed to be omitted, and to provide for thirtieth day of November following the end of the financial year or furnishing of the relevant annual return, whichever is earlier, as the last date for rectification of errors or omission in respect of details of outward supplies furnished under sub-section (1).

It also seeks to insert sub-section (4) so as to provide for tax period-wise sequential filing of details of outward supplies under sub-section (1).

## Section 37 Important takeaways

1. Statutory backing given to the provisions of rule 59(6) of CGST Rules.
2. The law provides that ITC would be communicated in GSTR-2B in a restricted manner i.e., categorizing as credit available, and ITC not available. Therefore, section 37(1) has been further amended.
3. The statutory condition to restrict filing of Form GSTR-1 between 11<sup>th</sup> to 15<sup>th</sup> day of the month has been proposed to be removed.
4. The statutory provisions regarding two-way communication between the assessee's has been removed i.e, to accept or reject the changes made by recipient has been proposed to be removed.
5. The provisions relating to **Rectification** was given only in case of mis-match in doing matching. Since the provisions relating to section 42 and 43 are proposed to be omitted, the rules may also undergo a change to prescribe the procedure to rectify.
6. Provision alike to section 39(10) is also proposed to be incorporated in section 37 i.e., sequential filing of Form GSTR-1.

# RATIONALISATION OF RETURNS

- Communication to Recipient i.e., GSTR-2A and GSTR-2B

## Substituted Section 38. Communication of details of inward supplies and input tax credit.

- (1) The details of outward supplies furnished by the registered persons under **sub-section (1) of section 37** and of such **other supplies** as may be prescribed, and an **auto-generated statement** containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.
- (2) The auto-generated statement under sub-section (1) shall consist of—
  - (a) details of inward supplies in respect of which credit of **input tax may be available** to the recipient; and
  - (b) details of supplies in respect of which **such credit cannot be availed**, whether wholly or partly, by the recipient, on account of the details of the **said supplies being furnished under sub-section (1) of section 37**,—
    - (i) **by any registered person** within such period of taking **registration** as may be prescribed; or
    - (ii) **by any registered person**, who has **defaulted in payment of tax** and where such default has continued **for such period** as may be prescribed; or
    - (iii) **by any registered person**, the **output tax payable** by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, **exceeds the output tax paid** by him during the said period by such **limit as may be prescribed**; or

## Substituted Section 38. Communication of details of inward supplies and input tax credit.

- iv. by any registered person who, during such period as may be prescribed, has **availed credit of input tax** of an amount **that exceeds the credit** that can be availed by him in accordance with clause (a), by **such limit as may be prescribed**; or
- v. by any registered person, who has **defaulted in discharging his tax liability** in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or
- vi. by such other class of persons as may be prescribed.”.

## Section 38 Memo to the Finance Bill, 2022

Clause 103 seeks to substitute a new section for section 38 of the Central Goods and Services Tax Act. Sub section (1) seeks to provide for prescribing such other supplies as well as the manner, time, conditions and restrictions for communication of details of inward supplies and input tax credit to the recipient by means of an auto-generated statement and to do away with two-way communication process in return filing.

Sub-section (2) seeks to provide for the details of inward supplies in respect of which input tax credit may be availed and the details of supplies on which input tax credit cannot be availed by the recipient.

## Section 38 Key takeaways

1. Statutory backing given to the Form GSTR-2B or Rule 60 of the CGST Rules.
2. The list of credit which should be restricted is given under section 38(2).
3. It is notable that section 16(2) restricts the availment of ITC which is appearing as 'RESTRICTED' in Form GSTR-2B. However, said credit shall become 'ELIGIBLE' once said restriction is removed in Form GSTR-3B. It is suggested that the suitable provision for removing the credit from RESTRICTED list to ELIGIBLE list should be incorporated in the coded law.
4. It is also notable that the availment of credit is directly linked with compliance status of corresponding supplier.
5. Section 38(2)(b)(iv) gives an indication similar to rule 36(4) i.e., law relating to availment of credit in excess of auto-generated amount in Form GSTR-2B. However, in our opinion, section 16 has not been amended to provide for such enabling provision.

# RATIONALISATION OF RETURNS

- The Return

## Substituted Section 39. Furnishing of returns. (Amendment highlighted in grey tab)

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within [**thirteen**] ~~twenty~~ days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

## Substituted Section 39. Furnishing of returns. (Amendment highlighted in grey tab)

(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,—

- (a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or
- (b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.

### Language prior to substitution

[Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:]

## Substituted Section 39. Furnishing of returns. (Amendment highlighted in grey tab)

(9) **[Where]** ~~Subject to the provisions of sections 37 and 38, if~~ any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars [*in such form and manner as may be prescribed*], subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after **[thirtieth day of November]** ~~the due date for furnishing of return for the month of September or second quarter~~ following [*the end of the financial year to which such details pertain*], or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods **[or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him]** ~~has not been furnished by him~~:

**Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period.**

## Section 39 Memo to the Finance Bill, 2022

Clause 104 seeks to amend sub-section (5) of section 39 of the Central Goods and Services Tax Act so as to provide that the non-resident taxable person shall furnish the return for a month within thirteen days after the end of the month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

It further seeks to substitute the first proviso to sub-section (7) so as to provide an option to the persons furnishing return under proviso to sub-section (1) to pay either the self- assessed tax or an amount that may be prescribed.

It also seeks to amend sub-section (9) by removing reference of section 37 and section 38 and to amend the proviso to said sub-section (9) so as to provide for thirtieth day of November following the end of the financial year, or the date of furnishing of the relevant annual return, whichever is earlier, as the last date for the rectification of errors in the return furnished under section 39.

It also seeks to amend sub-section (10) so as to provide for furnishing of details of outward supplies of a tax period under sub-section (1) of section 37 as a condition for furnishing the return under section 39 for the said tax period.

## Section 39 Key takeaways

1. Due date for filing returns by non-resident taxable person in Form GSTR-5 has been changed from 20<sup>th</sup> to 13<sup>th</sup>.
2. The payment of tax by quarterly taxpayer as per self-assessment method or fixed payment method has been statutorily recognised. Therefore, fixed payment method need not to be notified as a special procedure of section 148.
3. Filing of Form GSTR-1 of same tax period is a condition precedent for filing of Form GSTR-3B.

# **NO PROVISIONAL ITC NOW**

**- Welcome provision for re-availment of ITC**

## Substituted Section 41. Availment of input tax credit

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be **entitled to avail** the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.
- (2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

## Section 41 Memo to the Finance Bill, 2022

Clause 105 seeks to substitute a new section for section 41 of the Central Goods and Services Tax Act so as to do away with the concept of “claim” of eligible input tax credit on a “provisional” basis and to provide for availment of self-assessed input tax credit subject to such conditions and restrictions as may be prescribed.

## Section 41 Key takeaways

1. The expression “entitled to avail” has been substituted by “entitled to take”.
2. There is no concept of provisional credit now.
3. In a situation where ITC appears in Form GSTR-2B but the tax in respect thereof has not been paid by the corresponding supplier, the recipient need to reverse the credit with interest. However, when the tax is paid by the taxpayer, recipient is entitled to avail the credit. The provision regarding re-availment of credit is a welcome provision.
4. Section 42, as omitted now, provided that in the above circumstance, recipient is entitled to claim refund of the tax paid to the extent tax is paid by the supplier. Said provision is not there now.
5. Also, section 42 earlier provided that supplier shall pay the tax within the time provided under section 39(9) of the Act. However, said restriction is not provided now.

# Section 42, 43 and 43A omitted

- No Matching Concept now

# Payment of Tax

## Section 49. Payment of tax, interest, penalty and other amounts

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41 [~~or section 43A~~], to be maintained in such manner as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions [~~and restrictions~~] and within such time as may be prescribed.

### Substituted sub-section (10):

(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,—

- (a) integrated tax, central tax, State tax, Union territory tax or cess; or
- (b) integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25,

in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

## Section 49. Payment of tax, interest, penalty and other amounts

### Newly added sub-section

(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.

## Section 49 Memo to the Finance Bill, 2022

Clause 109 seeks to amend sub-section (4) of section 49 of the Central Goods and Services Tax Act so as to provide for prescribing restrictions for utilizing the amount available in the electronic credit ledger.

It further seeks to amend sub-section (10) so as to allow transfer of amount available in electronic cash ledger under the Central Goods and Services Tax Act of a registered person to the electronic cash ledger under the said Act or the Integrated Goods and Services Tax Act of a distinct person.

It also seeks to insert sub-section (12) so as to provide for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger.

## Section 49 Key takeaways

1. Balance in electronic cash ledger is allowed to be transferred to other GSTINs of the same person.
2. However, it can be transferred only in a case when there is no outstanding pending liability in his electronic liability register.
3. Statutory backing given to the rule 86B vide section 49(12) of the CGST Act.

## Section 50. Interest on delayed payment of tax

### Substituted language:

(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

### Language prior to substitution:

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent, as may be notified by the Government on the recommendations of the Council.

# Amendments in CGST Act, 2017

## **Section 50** Memo to the Finance Bill, 2022

Clause 110 seeks to substitute a new sub-section for sub-section (3) of section 50 of the Central Goods and Services Tax Act, retrospectively, with effect from the 1st July, 2017, so as to provide for levy of interest on input tax credit wrongly availed and utilised, and to provide for prescribing manner of calculation of interest in such cases.

# Amendments in CGST Act, 2017

## Section 50 Key takeaways

1. Rate of tax has been proposed to be reduced from 24% to 18% w.r.e.f 01.07.2017. Clause 115 of the Finance Bill, 2022 refers.
2. This is a welcome amendment.
3. It will entail consequences in the nature of eligibility to claim refund etc.

# Refunds

## Section 54. Refund of tax (Amendment highlighted in grey tab)

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in [**such form and**] [**the return furnished under section 39 in such**] manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of [**two years**] [**six months**] from the last day of the quarter in which such supply was received.

## Section 54. Refund of tax (Amendment highlighted in grey tab)

(10) Where any refund is due ~~under sub-section (3)~~ to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

- (a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
- (b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

*Explanation.*—For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act.

### *Newly inserted explanation*

(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;

## Section 54 Memo to the Finance Bill, 2022

Clause 112 seeks to amend proviso to sub-section (1) of section 54 of the Central Goods and Services Tax Act so as to explicitly provide that claim of refund of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed.

It further seeks to amend sub-section (2) so as to align it with sub-section (1) by providing time limit of two years from the last day of the quarter in which the supply was received for claiming refund of tax paid on inward supplies of goods or services or both by the person specified in the said sub-section.

It also seeks to amend sub-section (10) so as to extend the scope of the said sub-section to all types of refund claims.

It also seeks to insert a new sub-clause (ba) in clause (2) of Explanation in order to provide clarity regarding the relevant date for filing refund claim in respect of supplies made to a Special Economic Zone developer or a Special Economic Zone unit.

## Section 54 Key takeaways

1. Refund of balance in electronic cash ledger is being filed in Form GST RFD-01 due to non-functioning of Form GSTR-3. Since said functionality has been done away with, the enabling provision for applying refund through GSTR-3 has been removed.
2. Now, the refund can be withheld even in cases where zero-rated supplies are made with payment of tax or in other cases as well. This is a corrective amendment.
3. The relevant date for claiming refund in case of SEZ supplies has been provided now. Prior to amendment vide CGST (Amendment) Act, 2018, w.e.f. 01.02.2019, the end of financial year was considered as the relevant date. After aforesaid amendment, the reference to these supplies was left over to be explained.

# Other Miscellaneous Amendments

# Amendments in CGST Act, 2017

- (1) Reference to inward supply return i.e., Form GSTR-2 omitted from late fee provision given under section 47 as well as from scope of workings to be done by GST Practitioner u/s 48.
- (2) Section 47 i.e. Late Fee is now made applicable on late filing of Form GSTR-8.
- (3) Rectification in Form GSTR-8 can also be done by 30<sup>th</sup> November.
- (4) Reference of inward supply return omitted from section 168.
- (5) Authorisation given w.r.e.f. 01.07.2017 to website [www.gst.gov.in](http://www.gst.gov.in) to carry out all functions as required by CGST Rules, 2017.
- (6) HSN 2301. No duty on Unimended waste generated during production of fish meal, except for fish oil, w.r.e.f. 01.07.2017.



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- Kashish has 10+ years of experience in providing tax and legal services; and has been the head of Litigation Division of one of the top 10 CA firm specializing in indirect tax litigation and advisory services along with expert domain of audit services. In 2021, he established his own law consultancy firm, M/s Paksh Legal.
- He possesses extensive knowledge and strong command on the subject. Kashish has successfully handled and represented varied matters on indirect taxes (including GST, VAT, Service tax, Customs, Excise). Kashish has worked for multiple industry segments including Indian and foreign multinationals, PSUs and Fortune 500 companies.
- Kashish has privilege of becoming one of the India's youngest taxation author in 2017 when his book - "Commentary on Revised Model GST Law" was published by Bharat Law House Private Limited. He has authored three editions of aforesaid book till date. In 2019, he authored two specialized books on GST, one on "GST Annual Return and Audit" and second as "GST Tracker" containing section wise, rule wise list of all notifications, circulars, orders, Removal of Difficulty Order and synopsis of judgments released till date of release of book.
- He has argued matters before 'Customs Excise and Service Tax Appellate Tribunal', Advance Ruling Authorities of various states in India and several State VAT Tribunals. Prior to introduction of GST, has handled issues pertaining to almost all the State VAT laws.
- He has delivered lectures/ talks on various subjects inter alia including GST, Service tax, VAT, central excise, Customs, etc. in various Chambers of Commerce & Industry, various forums of the Institute of Chartered Accountants of India, CAG etc.
- He has Contributed towards publications of the ICAI, Taxmanagement India, Taxmann, Institute of Actuaries of India, pamphlets of various chambers of Commerce and Industry etc.



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