

## GOODS & SERVICES TAX / IDT UPDATE-160

### 1. Amendments made vide the Finance Act, 2022 to be effective from 1<sup>st</sup> October, 2022

The Central Government vide [Notification No. 18/2022-CT dt. 28.09.2022](#) has appointed 1<sup>st</sup> day of October, 2022, as the date on which the provisions of sections 100 to 114, except clause (c) of section 110 and section 111 of the Finance Act, 2022, shall come into force.

Section 110(c) of the Finance Act, 2022 amends section 49 of the CGST Act, 2017 to allow transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the IGST Act of a distinct person. Section 111 of the Finance Act, 2022 substitutes section 50(3) of the CGST Act, 2017 retrospectively, with effect from 1<sup>st</sup> July, 2017, so as to provide for levy of interest on input tax credit wrongly availed and utilized. Both the above amendments have been brought into effect from 5<sup>th</sup> July, 2022 vide [Notification No. 9/2022-C.T. dated 05-07-2022](#). Therefore, vide [Notification No. 18/2022-CT dt. 28.09.2022](#), the remaining amendments have now been brought into force from 01.10.2022.

The amendments made vide the aforesaid sections of the Finance Act, 2022 in the relevant sections of the CGST Act, 2017 are given below for ready reference:

- a) Section 100 of the Finance Act, 2022 - Amendment in section 16 of the CGST Act, 2017 (Eligibility and conditions for taking input tax credit)
  - A new clause (ba) has been added in sub-section (2) to provide that input tax credit with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the taxpayer under section 38.
  - Sub-section (4) has been amended to provide for an extended time for availment of input tax credit by a registered person in respect of any invoice or debit note pertaining to a financial year upto 30<sup>th</sup> of November of the following financial year.
- b) Section 101 of the Finance Act, 2022 - Amendment in section 29 of the CGST Act, 2017 (Cancellation or suspension of registration)
  - Clause (b) of sub-section (2) has been amended to provide that the registration of a person is liable for cancellation, where a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing of the said return as against the earlier provision which provided non-filing for three consecutive tax periods.

- Clause (c) of sub-section (2) has been amended to provide that the registration of a person is liable for cancellation, other than those paying tax under section 10, has not furnished returns for such continuous tax period as may be prescribed.
- c) Section 102 of the Finance Act, 2022 - Amendment in section 34 of the CGST Act, 2017 (Credit and debit notes)
- Sub-section (2) has been amended to provide for an extended time for issuance of credit notes in respect of any supply made in a financial year upto 30.11.2022 of the following financial year.
- d) Section 103 of the Finance Act, 2022 - Amendment in section 37 of the CGST Act, 2017 (Furnishing of details of outward supplies)
- Sub-section (1) has been amended to provide for prescribing conditions and restrictions for furnishing the details of outward supply and for communication of such details to the concerned recipients.
  - The restriction earlier applicable for not being allowed to furnish the details of outward supplies from 11<sup>th</sup> day to 15<sup>th</sup> day of the month succeeding the tax period has been removed.
  - The two-way communication process which provided for acceptance or rejection of the details communicated has been done away with.
  - Provide for an extended time upto 30<sup>th</sup> November of the following financial year for rectification of errors in respect of details of outward supplies furnished under sub-section (1).
  - Tax-period wise sequential filing of details of outward supplies under sub-section (1) has been provided. Moreover, Government on the recommendations of the Council may allow a registered person to furnish a statement under sub-section (1), even if he has not furnished the details the details of outward supplies for one or more tax periods.
- e) Section 104 of the Finance Act, 2022 – Substitution of section 38 of the CGST Act, 2017 (Communication of details of inward supplies and input tax credit)
- Section 38 has been substituted with a new section prescribing the manner as well as 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.
- f) Section 105 of the Finance Act, 2022 - Amendment in section 39 of the CGST Act, 2017 (Furnishing of returns)
- It has been provided that the non-resident taxable person shall furnish the return for a month by 13<sup>th</sup> day of the following month instead of 20<sup>th</sup> day

after the end of a calendar month.

- Persons furnishing quarterly return have been provided an option to either pay self-assessed tax or an amount that may be prescribed.
- The condition of complying with sections 37 and 38 before correcting any omission or incorrect particulars in the next return has been done away with.
- An extended time of 30<sup>th</sup> November of following financial year has been provided for rectification of errors in the return furnished under section 39.
- Furnishing of details of outward supplies of a tax period under section 37(1) has been provided as a condition for furnishing of return under section 39 for the said tax period in addition to the earlier condition of furnishing the returns for any of the previous tax periods. However, the Government may on the recommendations of the Council allow furnishing of return under section 39 even if the earlier conditions are not satisfied.

g) Section 106 of the Finance Act, 2022 - Substitution of section 41 of the CGST Act, 2017 (Availment of ITC)

This section has been substituted 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 the condition that where the tax payable has not been paid by the supplier shall be reversed along with the applicable interest by the recipient. Further, where such tax has been paid by the supplier, input tax credit may be re-availed by the recipient.

h) Section 107 of the Finance Act, 2022 – Omission of sections 42, 43 and 43A of the CGST Act, 2017

Sections 42, 43 and 43A have been omitted so as to do away with two-way communication process in return filing. Further, the mention of sections 42 and 43 has been omitted from rule 85(2)(c).

i) Section 108 of the Finance Act, 2022 - Amendment in section 47 (Levy of late fee)

- Levy of late for late furnishing of return under section 52 have been inserted.
- Section 38 has been omitted in consequence to its amendment as described above.

j) Section 109 of the Finance Act, 2022 - Amendment in section 48 of the CGST Act, 2017 (GST Practitioners)

Consequent to the amendment in section 38 of the Act, sub-section (2) of section 48 of the Act has been amended so as to remove the reference of section

38 therefrom.

k) Section 110 of the Finance Act, 2022 - Amendment in section 49 of the CGST Act, 2017 (Payment of tax, interest, penalty and other amounts)

- Sub-section (4) has been amended so as to prescribe restrictions for utilizing the amount available in the electronic credit ledger
- The maximum proportion of output tax liability which may be discharged through the electronic credit ledger may also be specified by the Government on the recommendations of the Council.

l) Section 112 of the Finance Act, 2022 – Amendment in section 52 of the CGST Act, 2017 (Collection of tax at source)

Sub-section (6) of section 52 of the Act has been amended so as to provide for an extended time upto 30<sup>th</sup> November of the following financial year for rectification of errors identified in the statement required to be furnished under this section.

m) Section 113 of the Finance Act, 2022 - Amendment in section 54 of the CGST Act, 2017 (Refund of tax)

- It has now been explicitly provided that refund claim of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed i.e., the requirement of claiming such refund through return furnished under section 39 has been removed.
- The time limit for claiming refund of tax paid on inward supplies of goods or services or both under section 55 has been changed to two years from the last day of the quarter in which the said supply was received as against six months provided earlier.
- The extent of withholding the refund of tax has been extended by removing the reference to refund in case of unutilised input tax credit in sub-section (3).
- Clarification has been provided regarding the relevant date for filing refund claim in respect of supplies made to a SEZ unit or developer which shall be the due date of furnishing of return under section 39 in respect of such supplies.

n) Section 114 of the Finance Act, 2022 – Amendment in section 168 of the CGST Act, 2017 (Power to issue instructions or directions)

Consequent to the amendment in section 38, sub-section (2) of section 168 has been amended so as to remove the reference of section 38 therefrom.

## **2. Amendments in the CGST Rules, 2017**

Pursuant to the amendments made vide the Finance Act, 2022 getting notified with effect from 1<sup>st</sup> October, 2022, [Notification No. 19/2022-CT dt. 28.09.2022](#) has been issued to make the necessary amendments in CGST Rules, 2017. The amendments in the rules have also become effective from **01.10.2022**.

- a) Insertion of two new clauses in rule 21 (Registration to be cancelled in certain cases)

The following two new conditions have been added in rule 21 for cancellation of registration:

- Where a registered person who is required to file return under section 39(1) for each month of part thereof, has not furnished returns for a continuous period of six months
- Where a registered person who is required to file return under section 39(1) for each quarter or part thereof, has not filed returns for a continuous period of two tax periods

- b) Consequential amendment in rule 36 (Documentary requirements and conditions for claiming input tax credit) –

Pursuant to the amendment made in section 38 with regard to removal of Form GSTR-2 and doing away with two-way communication process, rule 36 has been amended to remove the reference to Form GSTR-2 therefrom. Further, it has been provided that the details of **input tax credit in respect of invoices or debit notes** shall be communicated in Form GSTR-2B.

- c) Amendment in rule 37 (Reversal of input tax credit in case of non-payment of consideration)

Sub-rules (1) and (2) of rule 37 has been substituted as under:

- (1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in Form GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice.

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section

15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

- (2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).
- (3) Sub-rule (3) providing for payment of interest has been omitted since the same as now been incorporated in sub-rule (1).
- d) Rule 38 providing for claim of credit by a banking company or a financial institution has been amended to remove the reference to Form GSTR-2 therefrom. Further, clauses (c) and (d) of rule 38 have also been omitted. Similarly, reference to Form GSTR-2 in rules 42 and 43 has also been omitted.
- e) In rule 60(7), for the words "auto-drafted", the words "auto-generated" have been substituted. Rule 60 prescribes the provision for Form and manner of ascertaining details of inward supplies.
- f) As a result of doing away with the two-way communication process for return filing, rules 69 to 77 and 79 have been omitted.
- g) Rule 83(8) enlists activities that can be undertaken by a Goods and Services Tax Practitioner on behalf of a registered person if so authorised by him. Clause (a) of sub-rule (8) of rule 83 has been amended to omit the words "and inward" therefrom.
- h) Rule 85 prescribing provisions for electronic liability register has been amended by omitting clause (c) of sub-rule (2) as the said clause pertained to mismatches under sections 42 or 43 or 50.
- i) Rule 89 prescribing provisions for refunds has been amended. In sub-rule (1) of rule 89, after the words "claiming refund of", the words, brackets and figures "any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or" have been inserted and simultaneously the first proviso to sub-rule (1) has been omitted.

Thus, now the refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 shall be filed electronically in Form RFD-01 instead of the respective return forms as provided earlier.

- j) Rule 96(3) has been amended to omit the reference of Form GSTR-3 therefrom. Rule 96 prescribes the provision for refund of integrated tax paid on goods or services exported out of India.
- k) Form GSTR-1A, Form GSTR-2 and Form GSTR-3 of the said rules have been omitted.
- l) In Form GST PCT-05 of the said rules, in Part-A, in the table, against Sr. No.1,

under the heading "List of Activities", the words, "and inward", have been omitted.

**3. Withdrawal of Notification No. 20/2018-CT dt. 28.03.2018**

[Notification No. 20/2018-CT dt. 28.03.2018](#) had been issued by the Central Government in exercise of the powers conferred by section 148 of the CGST Act, 2017 to notify the specified persons under section 55 as the class of persons who shall make an application for refund of tax paid by it on inward supplies of goods or services or both, to the jurisdictional tax authority, in such form and manner as specified, before the expiry of eighteen months from the last date of the quarter in which such supply was received. The said notification has been rescinded w.e.f. 01.10.2022.

[Notification No. 20/2022-CT dt. 28.09.2022](#)

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GST & Indirect Taxes Committee*

*Vice- Chairman  
GST & Indirect Taxes Committee*

