

GST Alert 07/2021-22

Date 29.12.2021

Changes in GST Law

Government has now activated certain provisions in GST law which will be effective from 1.01.2022, these changes are notified vide notification 39/2021-Central Tax dated 21.12.2021, following is the gist of these legal changes:

All these changes in law are effective from 1st January 2022

I. Services provided by Clubs and Societies – Retroactive Amendment [Section 7]

Various High Courts across India have given verdicts saying that club and its member are one single entity hence service tax would not apply, this came to be known as the Doctrine of Mutuality in legal circles. Government has challenged these judgements in the Supreme Court where it is pending as we write this.

Similar arguments arose in GST regime as well and various entities stated mounting legal challenges yet again in various forums. GST Council recommended amending the law retroactively to make the transactions between Clubs and its members taxable irrespective of any court judgement. Please see our GST Alert 11/2020-21 dated 1.02.2021.

Accordingly, Government amended the CGST law in Feb 2021, which is now being activated.

As per this amendment the activities or transactions, by a person (other than an individual) to its members or constituents or vice-versa, for consideration would be considered as a Supply of Service. The person and its members shall be deemed to be two separate persons and the supply of activities or transactions inter-se shall be deemed to take place from one person to another.

Accordingly, services provided by clubs or societies to its members shall be taxable with retroactive effect from 1.07.2017. **The question whether the parliament can circumvent the express judgments of the courts where, based on a doctrine, the taxes levied in the past were struck down and that too retroactively would see another leg of litigation.**



Taxation of services rendered by the clubs to its members from 1.01.2022 prospectively cannot be contested anymore, they would be taxable for sure from 1.01.2022 onwards, but for the past, one will have to fight the fight.

II. ITC will be available only to the extent it is reflected in taxpayers GSTR 2B [Sec 16(2)(aa) of the CGST Act]

This much touted amendment has seen the light of the day, this is a gift (draconian) of the fake billers to the genuine taxpayers. Some bad apples have polluted the cart so much that the entire genuine taxpayer ecosystem will face harrowing experience and get involved in one more perennial reconciliation.

Effective from 1.01.2022, taxpayers will be eligible to avail credit only basis the ITC reflected in form GSTR 2B. The scheme will run as under:

1. Following outward supplies will be reflected in GSTR 2A

Sr. No.	Type of Supply / Transaction reported by Supplier	Supply reported in form	Recipients GSTR 2A
A	Outward supplies by regular taxpayer	GSTR 1 or IFF***	Part A
B	Outward supplies by Non-Resident Taxable Person	GSTR 5	Part A
C	Invoices furnished by an Input Service Distributor	GSTR 6	Part B
D	GST TDS	GSTR 7	Part C
E	GST TCS	GSTR 8	Part C
F	IGST paid on the import of goods or goods brought in DTA from SEZ unit or a SEZ developer on a bill of entry	--	Part D

*** - IFF means – Invoice Furnishing Facility for taxpayers who are filing GSTR 3B on Quarterly basis



2. Basis the above, details of ITC, inward supplies relevant for the recipient will be auto-populated in GSTR 2B, it will consist of the following:
- Invoices reported by Supplier in GSTR 1
 - Invoices reported by Supplier in IFF
 - Invoices furnished by a non-resident taxable person in FORM GSTR-5
 - Invoices furnished by an Input Service Distributor in FORM GSTR-6
 - IGST paid on the import of goods or goods brought in DTA from SEZ unit or a SEZ developer on a bill of entry

3. GSTR 2B will be made available every month as under:

Months	Due Date when GSTR 2B will be available
April, May, July, August, October, November, January and February	14 th of the succeeding month
June, Sept, December and March	12 th of the succeeding month

4. To illustrate the above in simple terms, GSTR2B will be available as under:

Month of GSTR 3B	GSTR 2B shall be available on	GSTR 3B Due Date
January 2022	14.02.2022	20.02.2022
February 2022	14.03.2022	20.03.2022
March 2022	12.04.2022	20.04.2022
April 2022	14.05.2022	20.05.2022
May 2022	14.06.2022	20.06.2022
June 2022	12.07.2022	20.07.2022



5. In other words, GSTR 2A will be locked and converted into GSTR 2B on 14th or 12th of the succeeding month and made available to the taxpayer on his GST portal, any transaction reported by his supplier after the 11th or 13th as the case may be, will be reflected in next month's GSTR 2B.
6. Savour this fact, say if a big manufacturer supplying crores of rupees of goods to its distributors has an internet blackout at its Indirect tax office and is not able to file its GSTR 1 by 11th of the next month, however all its distributors have filed there GSTR 1 by 11th, the consequence would be:
 - a. Distributors GSTR 2B would be almost Nil, but Output would be there, hence he would have to pay entire tax in cash, else
 - b. Department will be well within its right to start auto recovery proceedings against him.

One question still lingers on, Rule 36(4) which allows the recipient to avail ITC in excess by 5% of the ITC reflecting in its GSTR 2A, is still part of the rule book which is in direct conflict with this amended provision of the law. Hope the Council corrects this anomaly if that is not intentional.

III. Direct Recovery of tax in cases where tax as per GSTR 1 is more than GSTR 3B

Section 75(12) is amended to say that tax declared in GSTR 1 but not paid in GSTR 3B shall now be considered as 'Self Assessed tax' and would be allowed to be recovered directly from the taxpayer without any recourse of issuing SCN.

In other words, if tax payable reported in GSTR 1 is more than the tax paid in GSTR 3B, officers will be allowed to recover the same directly without any recourse to adjudicating process. There are N number of reasons which can cause tax payable in GSTR 1 to be genuinely more than GSTR 3B, to make its recovery possible on auto mode is against all norms of equity.

IV. Change in norms for attachment of bank accounts and property of the taxpayer [Section 83]

Three important changes have been made in Property and Bank Attachment norms by amending this section:

- a. Earlier, attachment of bank accounts and property was possible only in demands in case of: -



- a. Section 62 – Assessment of non-filers of returns
- b. Section 63 – Assessment of unregistered persons
- c. Section 64 – Summary assessment in certain special cases
- d. Section 67 – Inspection, Search and Seizure proceedings
- e. Section 73 and 74 – Where demand notices in terms of SCN have been issued

With the amendment, in addition to the above provisions, attachment would be allowed in demands arising out of Scrutiny of returns and Inspection of goods in movement

- b. Second important change is that, earlier attachment could be done only in case of pendency of any proceedings, which in other words meant there was a confirmed demand which was pending to be paid by the taxpayer, with this amendment, attachment can be done even upon initiation of the proceedings, for example during scrutiny of the return if the officer deems that there is a demand of tax which the taxpayer is disputing, the Commissioner can go ahead and attach the bank account or property as he deems fit
- c. Last but important change is that, earlier only property or bank account of the deviant taxpayer was allowed to be attached, with this amendment, property of any person whom the officer deems has benefitted due to fake / bogus billing or on whose instance such transaction is conducted, is allowed to be attached

V. Amendment in E-way bill offence handling mechanism [Section 129 and 130]

Section 129 was applicable in offences where the goods were being transported in contravention of the provisions of the law (**without intent to evade tax**), in other words, where either any one of the document was not available or there was mismatch of some information in the documents available during transit.



Whereas section 130 was applicable where the transit of goods was being done **with express intent to evade payment of tax**, does not account for any goods on which he is liable to pay tax, does not hold GST registration

If the taxpayer, whose goods were held up by officers say for mismatch of address in invoice and e-way bill, if he didn't agree to pay 100% tax and 100% penalty u/s 129, case was automatically shifted to section 130 where the penalty is equivalent to value of the goods so seized.

There are 2 important amendments made in these sections as under:

- a. At present, full tax and 100% (of tax) penalty is required to be paid to release the goods which are seized for violation of E-way Bill related offences under Section 129. **With this amendment, it is provided that goods will be released on payment of penalty equal to 200% of tax and no further tax will be payable for release of such goods.**
- b. Section 129 is now delinked with section 130, cases where taxpayers do not pay the penalty proposed in section 129 cannot be automatically shifted to 130. Only those cases where the transport of goods was being undertaken with an intent to evade tax will fall under 130, rest all shall be processed under section 129. This means that the taxpayer cannot be threatened to pay value of the goods instead of 200% penalty in normal cases.

VI. Change in Pre-deposit norms for filing appeal in E-way related bill cases [Section 107]

Due to the above amendment, taxpayers will be paying only penalty in case of E-way bill offences, this necessitated and amendment in mandatory pre-deposit norms where an appeal is preferred against an order in section 129. This appeal will have to be filed only after payment of 25% of the penalty so levied by the officer, which in other words means 50% of tax amount will have to be paid as pre-deposit before any appeal can be filed.

In case 200% penalty is already paid for securing release of goods, that would be deemed sufficient compliance of the pre-deposit requirement and he wont be forced to pay another 25%.

VII. Amendment in E-way bill offence handling mechanism Section 130



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Section 130 began with a non-obstante clause, whereby Due to the above amendment, taxpayers will be paying only penalty in case of E-way bill offences,

VIII. Conclusion

Series of changes being introduced over the last couple of years including the ones discussed above leaves a raw and numbing feeling in the minds of the taxpayers, they are being left to the mercy of the system and its officialdom. Seldom functioning GSTN Portal and overzealous DGARM sitting in New Delhi play around with data like a bull in a china shop. Draconian powers are being served to the department on a platter in the name of stopping fake billing, these very powers are being used, abused and misused with alacrity against taxpayers who are diligent and honest taxpayers, he is slapped first and then asked to explain.

We are officially entering an era of TAX TERRORISM.

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