GST Alert 13/2018-19
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Changes made in GST Law

Based upon recommendations of the GST Council certain amendments were made in all GST laws. Government has come out with a series of notifications making most of these amendments effective from 1st February, 2019. Some amendments have yet not been notified though. Following is a gist of these changes:

Please note, that the effective date of applicability of all the following amendments shall be 1.02.2019 and will be applicable for both intra as well inter-state transactions wherever applicable.

1. Changes in GST Registration requirements [Section 2 (18), 25(1), 25 (2) and 29]

A. Multiple Registration within a state

A person having multiple places of business in a state was permitted to have more than one registrations only if he was having different business verticals (meaning different types of businesses), it would now be possible for such persons having multiple places of business in a state to have more then one registration in that state subject to following conditions:

a. Such person shall not pay tax under Composition Scheme for any of his places of business if he is paying tax at normal route for any other place of business;

b. All separately registered places of business of such person shall pay tax on supply of goods or services made to another registered place of business of such person within the state and issue an invoice for such supply.

c. If any one place of business of a registered person becomes ineligible to pay tax under Composition, all other registered places of business within the state will also become ineligible.

B. Separate registration for a SEZ

It has now been expressly provided in the Act that a person in a SEZ or being a SEZ developer have to apply for separate registration as compared to his registration in respect of the

407, Aaryan Workspaces, Opp. Gala Business Centre, H.L. Commerce College Rd.
Navrangpura, Ahmedabad - 380 009. Gujarat (India)
t. +91-79-400 22 628 / 29 / 30 e. info@niteshjain.co.in w. www.niteshjain.co.in

place of business located outside the SEZ in the same state or territory. Earlier the said provision was contained only in the CGST Rules. To rationalize such provision, the empowering provision is now given in the Act.

C. **<u>Suspension of Registration (Section 29 and Rule 21A)</u>**

When a person applies for cancellation department takes anywhere between 15 to 30 days (sometime more) to process the application and between this time person is required to comply with the procedural law and keep filing returns in time else pay late fee. To stop this, provisions have been amended, whereby now the registration will be deemed to be suspended from the date of application for cancelation or the date from which the cancellation is sought, whichever is later.

A registered person, whose registration has been so suspended, shall not make any taxable supply during the period of suspension and shall not be required to furnish any return.

2. Change in concept of 'Supply' [Section 7]

A. **<u>Amendment in Section 7 (1)</u>**

The definition of supply given under section 7 constituted of four clauses. Clause (d) stated that the activities mentioned in schedule II would be treated as supply. However, this **led to an understanding that an activity listed in Schedule II would be deemed to be a supply even if it does not constitute as a supply as per the first three clauses**.

The intent of the Act through schedule II was only to provide for classification between goods or services once it was held to be a supply as per the first three clauses. To carry out this intention, a retrospective amendment has been made in the definition of supply with effect from 1st July 2017.

Hence, all activities mentioned in Schedule II shall be classified as a supply only if they satisfied any one of the 3 clauses of section 7 (1) of the CGST Act, in other words schedule II shall stand only as a classification provision.

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B. Schedule I

Entry 4 of Schedule I has been been amended so as to bring any unregistered person involved in import of services under the purview of GST if such importation is carried out in the course or furtherance of business from a related person or any of their other establishments outside India. Such person is now liable to register and pay taxes on such import of services.

C. Schedule III

Schedule III gives a list of transactions which are **neither goods nor services** and hence are outside the purview of GST. Following three sets of transactions are added to this list so as bring them out of the GST net and settle all controversies in this regards:

i. Supply of goods from a place in the outside India to another place outside India without such goods entering into India.
ii. Supply of warehoused goods to any person before clearance for home consumption.
iii. High Sea Sales

3. Reverse Charge on supplies from unregistered person [Section 9(4) of CGST Act and 5(4) of IGST Act]

Provisions which provide for applicability of RCM on supplies made unregistered persons have been amended. Earlier all categories of recipients be it individual, partnership firm or companies receiving supplies made by unregistered persons were falling under RCM.

As per new provisions government can choose to apply RCM only on **certain class of registered persons** who shall then be liable to pay GST on RCM basis on all types of supplies received from unregistered persons. Separate notification specifying type of registered person will be issued, till that time this provision will have no play.

Government has vide notification 2/2019-CTR rescinded notification 8/2017-CTR which gave exemption from leviability of RCM on Supply from Unregistered Persons. This would not make any difference whatsoever because the section under which 8/2017-CTR was issued has itself been amended and now to levy tax on supplies from unregistered person government will have to issue a new notification specifying class of registered persons as discussed above.

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4. Composition Scheme

A. Limit has been raised from Rs 1 Crore to Rs 1.5 Crore so as to facilitate trade practices.
B. Registered person opting for composition scheme would not loose eligibility for composition even if they supply services of value not exceeding 10% of their turnover in the preceding financial year in a State or Rs 5 lakhs, whichever is higher.

5. Input Tax Credit [Section 17]

A. Exempt Supply for purposes of Proportionate reversal

Section 17 (3) provides a list of activities that shall be included in the value of exempt supplies, which is under:

i. Supplies on which the recipient is liable to pay tax on RCM,
ii. Transactions in securities,
iii. Sale of land
iv. Sale of Post BU property

Now an Amendment is made to exclude following transactions

Transactions specified in Schedule III like Actionable Claims (other than sale of land and post BU property)

B. ITC on Motor vehicles and services in relation to it

Motor Vehicles

Earlier ITC of all kinds of motors vehicles was not available except in few cases, as per the amendment now ITC on only passenger vehicles having capacity of 13 or less passengers (including driver) will not be available except in following cases:

- Further supply of same (like further sale or leasing)
- Transportation of passengers
- Imparting training on driving

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Services in relation to Motor Vehicle

Credit of following services in relation to a motor vehicle shall not be available now:

a. General insurance
b. Repair and maintenance

However, in following cases above ITC shall be available:

i. If the motor vehicles are used for further supply thereof, transportation of passengers or for imparting training on driving such vehicles
ii. If the taxable receiving such services is engaged—
    a. in the manufacture of such motor vehicles, vessels or aircraft; or
    b. in the supply of general insurance services in respect of such motor vehicles

6. Credit / Debit Note [Section 34]

As per earlier provision, if any change was required to be made in an old tax invoice, one could do it by issuing credit or debit notes. One credit / debit note could amend only one tax invoice at a time and therefore if multiple invoices required amendment one was required to issue equal number of credit / debit notes. This was causing a lot of hassles for the industry especially for passing of trade discounts.

To avoid this, provisions have been amended to say that one can now issue one credit / debit note for amending one or more than one Tax invoices.

One will have to wait and see how GSTN implements this important change on the portal.

7. ITC Utilisation [Section 49]

The new process of ITC utilization requires the utilization of IGST first against payment of any output tax liability in the form of CGST/SGST/UTGST/IGST. Balance of CGST/SGST/UTGST can be used only when the balance of IGST is exhausted. Further, SGST can be utilized for payment of IGST only after CGST balance is exhausted

This proviso has been inserted to minimise fund settlement between centre and state governments on account of IGST. Powers have also been taken to notify method of utilization of ITC through rules.

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8. Retrospective Disallowance of credit of KKC [Section 140(1)]

Retrospective amendment has been brought to notify that transitional credit shall be available only in respect of eligible duties. The definition of eligible duties has been modified and now it does not include Cesses like Krishi Kalyan Cess, Education Cess, Secondary and Higher Education Cess, Additional Duties of Excise (Textiles and Textiles article) Act ,1978 etc. Credit of these cesses were available as transitional credit as per the original terminology will not be available through a retrospective amendment. **This retrospective amendment will have to withstand legal challenges because this is a retrospective amendment which is grossly prejudicial to the interests of the assessee. In our view this amendment will not withstand judicial scrutiny in the long run.**

Conclusion

These amendments are seeing light of the day after almost 6 months from the day GST Council issued draft recommendation to this effect. Knowing the pace of legislative amendments in India and GST being a truly federal law, this timespan is as good as it comes. There are many more amendments that are already proposed by the GST Council and we sincerely hope they see the light of the day much earlier.

Formulated by:
N J Jain & Associates
Chartered Accountants

CA Nitesh Jain
Managing Partner

CA Gaurav Khetan
Partner

CA Praveen Maheshwari
Partner

CA Jay Dalwadi
Partner

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