



NITYA's INSIGHT | Issue 8 |

GST changes effective from February 1, 2019

February 4, 2019

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Introduction

With the Lok Sabha elections coming up in next few months, there were no expectations from the Interim Budget for the Financial Year 2019-2020 as far as Indirect Taxes are concerned. Further, with advent of GST, it is the GST Council which undertakes all the decisions and amendments in the GST laws. Resultantly, the Finance Bill, 2019 presented by the Hon'ble Finance Minister did not contain any amendment in the GST laws. Surprisingly, the Union Government also choose not to make any changes either in the Customs duty rates or the Customs laws.

However, February 1, 2019 still holds relevance from GST perspective. In our Insight dated August 20, 2018, we had discussed the bills introduced in Lok Sabha to bring various amendments in the Central Goods and Services Tax Act, 2017 ('CGST Act') and the Integrated Goods and Services Tax Act, 2017 ('IGST Act'). These amendments were given presidential assent on August 29, 2018. The amendments have been brought into effect from February 1, 2019 (except new return provisions).

This Insight attempts to discuss the changes brought in by the Amendment Acts along with corresponding changes in the Central Goods and Services Tax Rules, 2017 ('CGST Rules'). Further, considering its widespread importance, the Insight also captures changes in provisions relating to blocked input tax credit in particular.

Hope you find this an interesting read!

Regards,
Team NITYA

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RECENT AMENDMENTS IN GST LAW

A. Notifications effective from February 1, 2019

1. Effective date of CGST, IGST and UTGST Amendments Acts

- The Central Government has appointed February 1, 2019 as the date from which the provisions of following Acts come into force:
 - Central Goods and Services Tax (Amendment) Act, 2018 ('CGST Amendment Act')
 - Integrated Goods and Services Tax (Amendment) Act, 2018 ('IGST Amendment Act')
 - Union Territory Goods and Services Tax (Amendment) Act, 2018 ('UTGST Amendment Act')

(hereinafter collectively referred to as '**GST Amendment laws**').

- The Government has kept provisions relating to new return format in abeyance. Further, certain provisions (like amendment in Section 7 relating to scope of supply and Section 140 relating to transitional credits) already became effective from July 1, 2017 retrospectively as soon as the CGST Amendment Act was passed.
- Please refer to our update dated August 20, 2018 for detailed analysis of amendments made vide these Acts (attached with this update for ready reference).
- CBIC has also issued a Circular, making corresponding changes in earlier Circulars in pursuance of such amendments.

[Refer: Notification No. 02/2019-Central Tax, Notification No. 01/2019-Integrated Tax, Notification No. 01/2019-Union Territory Tax, all dated January 29, 2019, Circular No.88/7/2019-GST dated February 1, 2019]

NITYA Comments: *It is important to note that the Government has not notified certain changes relating to amendments made in Explanation 1 and 2 to Section 140 of the CGST Act. Interestingly, these provisions came into force from July 1, 2017 as soon as the CGST Amendment Act received presidential assent. Therefore, the Notification is ineffective to the extent it does not notify the said changes in the Amendment Act.*

2. Amendment in the CGST Rules

- In line with the amendments made vide CGST Amendment Act, the Central Government has made various amendments in the CGST Rules. The key changes are discussed hereunder.
- The CGST Amendment Act provides option of obtaining separate registration for separate place of business in the same State (*omitting the option of obtaining separate registration for separate business vertical*). Consequential changes have also been made in Rule 11 of the CGST Rules.
- The Government has inserted a new Rule 41A in the CGST Rules to provide for transfer of credit from existing registration to a new registration within the same State where the taxpayer opts to obtain separate registration for separate place of business in the same State. Following points are notable in this regard:

- Matched input tax credit can be transferred either wholly or partly.
- Taxpayer transferring the credit, needs to furnish details in FORM GST ITC-02A electronically.
- Input tax credit shall be transferred to the new registration in the ratio of the value of assets held by each registration at the time of new registration. 'Value of assets' means value of entire assets of the business (irrespective of whether input tax credit ('ITC') has been availed on such assets or not).
- ITC will be credited in the electronic credit ledger of new registration post acceptance of details furnished in FORM GST ITC-02A by the transferor.

***NITYA Comments:** The stipulation of transferring 'matched input tax credit' is beyond the scope of statutory provisions since there is no stipulation in the CGST Act to this effect. Further, it is not clear as to whether the matching is to be understood as matching of credits through FORM GSTR 2A.*

In the absence of any clarification regarding the methodology for determining 'value of assets', book value of assets should be considered.

- The Government has inserted Rule 21A (in the light of amendment in Section 29 of the CGST Act) for suspension of registration pending cancellation proceedings. The said Rule provides that person who applied for cancellation, cannot make any taxable supply and need not furnish any return under Section 39 of the CGST Act.

***NITYA Comments:** On a careful reading of Rule 21A, it is surprising that the Rule provides academic relief from filing FORM GSTR-3 (return under Section 39) which is not operational as on date. The taxpayer would still be required to file FORM GSTR-1 and FORM GSTR-3B under Section 37(1) of CGST Act and Rule 61(5) of the CGST Rules, respectively.*

- Rule 53 of the CGST Rules has been amended to provide particulars to be mentioned on debit notes and credit notes issued against multiple invoices. The amendment has been brought in line with the amendment in Section 34 of the CGST Act which allows issuance of consolidated debit note and credit note against multiple invoices.

[Refer: Notification No. 03/2019-Central Tax dated January 29, 2019]

3. Reverse Charge on procurement made from unregistered person

- The amended Section 9(4) of the CGST Act provides that reverse charge on procurements from unregistered person, shall be notified by the Government on specified category of goods and services and shall be applicable on specified category of persons.
- Correspondingly, Government has rescinded Notification No. 08/2017-Central Tax (Rate) dated June 28, 2017 ('Notification No. 08/2017') w.e.f. February 1, 2019 exempting reverse charge liability on inward supplies from an unregistered person.

[Refer: Notification No. 01/2019-Central Tax (Rate) dated January 29, 2019]

***NITYA Comments:** Notably, the amended Section 9(4) of the CGST Act will operate only once the Government notifies categories of goods or services and persons in respect of which GST is to be paid*

under reverse charge when procured from unregistered person. The Government has not yet specified any such category of goods or services.

The rescission of Notification No. 08/2017 will not trigger the applicability of reverse charge mechanism on procurements from unregistered persons.

B. Changes in the CGST Act relating to blocked credits

1. Relevant Changes

- The relevant changes in Section 17(5) of the CGST Act relating to blocked credits, have been tabulated for ready reference:

S. No.	Amended provision	NITYA Comments
1.	ITC will be restricted only on motor vehicles for transportation of passengers with seating capacity of up-to 13 passengers (including driver)	<i>Henceforth, ITC on motor vehicles with seating capacity of more than 13 passengers used for transportation of employees (like bus or tempo traveler) or any other motor vehicles used for business purposes, will be available. Prior to the amendment, ITC was already available on motor vehicles (like dumpers, loaders, work-trucks etc.) that were used for transportation of goods.</i>
2.	ITC on services of general insurance, servicing, repair and maintenance of motor vehicles will be barred except in the following cases: - Where ITC on motor vehicle itself is available - To the manufacturer of motor vehicle - To insurance companies engaged in insuring motor vehicle	<i>This amendment makes it crystal clear that ITC was available on services of general insurance, servicing, repair and maintenance of motor vehicles prior to February 1, 2019.</i> <i>It is pertinent to note that even after the amendment, ITC on goods element used in such activities shall continue to be available in the absence of restriction to that effect. Similarly, ITC on warranty (including extended warranty services) would be available (warranty being distinct from repair and maintenance) again in the absence of any prohibition.</i>
3.	ITC on leasing, renting or hiring of motor vehicles will be barred except in a situation where ITC on motor vehicle itself is available or used for making outward supply of same category	<i>This amendment makes it crystal clear that ITC was available on services of leasing of motor vehicles prior to February 1, 2019.</i> <i>As ITC on motor vehicle for transportation of passengers with seating capacity of more than 13 passengers (including driver) will be available from February 1, 2019, ITC on leasing, renting or hiring such vehicles shall also be available (buses used for employee's transportation).</i> <i>It is notable that passenger transportation service is a distinct service vis-à-vis leasing, renting or hiring of motor vehicles. Hence, credit on passenger transportation service used for pick and drop of employees will continue to be available post February 1, 2019.</i>

4.	Input tax credit on food and beverages, outdoor catering, health services etc. will continue to be barred except where such expenses are obligatory under law	<i>ITC on expenses incurred due to statutory requirements shall be available like canteen service availed due to mandate under the Factories Act, 1948. It will be prudent for the taxpayers to study other legislations to determine statutory obligations cast upon them to incur such expenses.</i> <i>In respect of canteen service, taxpayers need to be mindful that employee recovery attracts GST rate of 5%, subject to condition that no ITC is availed. Hence, in case of recovery of canteen expenses from employees, taxpayers can avail only proportionate ITC after the amendment.</i>
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2. Transitional issues

- The amendment has put forth an unprecedented instance under the GST laws wherein the credits blocked before February 1, 2019 have been allowed now and vice-versa. This will assume greater importance in situations where provision of service falls prior to February 1, 2019 and invoice is issued post February 1, 2019 or vice-versa. For example: A caterer provided canteen service provided in January 2019 (when credit was blocked) and issued invoice in February 2019 (when credit is allowed).
- In our view, the date of usage of goods or services will be a relevant criterion to determine as to whether credit is barred or not. This is because Section 16(1) of the CGST Act lays down eligibility criterion for claiming ITC and allows credit on goods or services **used or intended to be used** in the course or furtherance of business. Thus, the provision as applicable on date of usage of goods or services shall be decisive for availability of credit. In the context of service (being intangible), the usage shall be seen coterminous with the provision or receipt of service.
- Applying the same principle, we have tabulated different scenarios as under:

Nature of goods / service	Date of usage*	Date of invoice	Credit eligibility	NITYA Comments
Insurance or repair of car	January 1, 2019	February 1, 2019	Yes	Notably, in case of insurance service (which is an assurance), the service can be said to be provided when assurance is given i.e. date of issuance of insurance policy. Hence, the service cannot be said to be provided throughout the insured period.
	February 1, 2019	January 1, 2019	No	
Outdoor catering, health services, life insurance (obligated by law); renting of bus	January 2019	February 2019	No	
	February 2019	January 2019	Yes	
Backhoe loader,	Both prior and post amendment	Prior to amendment	Partly available	In this case, the usage of goods falls under both periods. Hence, credit proportionate to goods

Sugar cane harvester (credit not allowed prior to amendment)				used post February 1, 2019 should be available applying the usage criterion. Notably, Section 18(1)(c) and Section 18(1)(d) of the CGST Act read with Rule 40 of the CGST Rules (applicable where final products were exempted or cleared under composition scheme before and subsequently become taxable) prescribe methodology to avail credit on capital goods in stock. Since no methodology has been prescribed under the GST law for dealing with present scenario, the methodology prescribed under Rule 40 of CGST Rules may be borrowed.
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*Provision / receipt for service

C. Miscellaneous changes

- Due date for FORM GSTR-7 – Tax Deducted at Source has been extended from January 31, 2019 to February 28, 2019 for the month of October 2018 to December 2018.

[Refer: Notification No. 07/2019-Central Tax dated January 31, 2019]

- Due date for FORM GSTR-8 – Tax Collected at Source has been extended from January 31, 2019 to February 7, 2019 for the month of October 2018 to December 2018.

[Refer: Removal of Difficulty Order No. 02/2019-Central Tax dated February 1, 2019]

- Government has extended the date for submission of FORM GST TRAN-1 till March 31, 2019 for the taxpayers who could not submit the form due to technical glitches and whose cases have been recommended by the GST Council.

[Refer: Order No.01/2019-GST dated January 31, 2019]

- Circular No.58/32/2018-GST dated September 4, 2018 has been amended to provide that inadmissible transitional credit being carried forward, can be paid voluntarily through FORM GST DRC-03 or recovered through FORM GST DRC-07. Earlier, the Circular provided an option to reverse such credit through FORM GSTR-3B.

[Circular No.88/7/2019-GST dated February 1, 2019]



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