



NITYA'S INSIGHT

Key year end To-Do's for financial year 2017-18

September 6, 2018

Dear Reader,

Financial Year 2017-18 ('FY 17-18') marks a historic year in the Indian taxation regime, with the introduction of Goods & Services Tax ('GST') from July 2017. Besides initial glitches in the IT framework, overall GST implementation has been an enriching experience. Government as well as industry have had their learnings from the first year of this mammoth indirect tax reform.

This update intends to apprise taxpayers about the key action items which can be considered for the FY 17-18. These year-end activities are drawn to ensure due compliance with the GST Law (on various tax positions on output-input supplies, tax credits etc.) for the FY 17-18.

1. Validation of tax positions and processes

- GST Law significantly evolved since its introduction. More than 350 Notifications, 70 Circulars, 30 Frequently Asked Questions, numerous Sector Updates and around 100 Advance Rulings were issued. This required taxpayers to be apprised about legal changes and its implications on their business. It is likely that some of the changes could have been inadvertently missed.
- The taxpayers can explore a review of tax positions and compliances undertaken from a GST perspective. This would ensure the following:
 - Identification of tax optimisation opportunities. This could be due to non-availment of legitimate credits, paying higher GST on output / reverse charge etc.
 - Identification of exposure and areas of non-compliances. This could be due to availment of ineligible credits, non-reversal of credits on exempt supply, charging lower rate of GST on output supply, non-compliance in documentation etc.
- Some of the transactions which have been a subject matter of debate are illustrated as under:
 - Applicability of GST on employee recoveries including valuation to be adopted
 - Applicability of GST on transactions between head office, branch office, liaison office etc.
 - RCM liability in case of CIF imports, government services, director services etc.
 - Rate of GST on canteen services at different points of time, and possibility of claiming refund of excess tax charged by canteen contractor
 - Availability of credit on cab, buses and other means of transportation of passengers, car leases, insurance and repair & maintenance of motor vehicles
 - Availability of credit on repair & maintenance of buildings (where expenses is not capitalized), CSR expenses, air tickets etc.
 - Requirement of credit reversal in case of samples, gifts etc.
 - Applicability of interest on supplementary invoices for price increase

The taxpayers can endeavour to adopt the correct legal position in the above as well as other complex issues.

2. Issuance of debit notes / credit notes for price revision in FY 17-18

- Any credit note(s) for price revision made in FY 17-18 need to be issued up to September 30, 2018.
- Importantly, the input tax credit on debit notes pertaining to invoices issued in FY 17-18 can be claimed till filing of return for September 2018 (i.e. till October 20, 2018).

3. Availment of input tax credits pertaining to FY 17-18 by September 30, 2018

- Input tax credits for the FY 17-18 need to be claimed before filing of GST return for the month of September (October 20, 2018) or annual return, whichever is earlier. Though October 20, 2018 is legally the last date for claiming credits for FY 17-18, the taxpayers can adopt September 30, 2018 as the last date for claiming credits to avoid any litigation with the authorities.
- The GST Law provide payment of tax by the supplier as a pre-condition for claiming credit. One of the ways that the taxpayers can consider to achieve this objective is reconciliation of credits in GSTR-2A vis-à-vis books of accounts. The matching exercise will help the taxpayers in identifying the following:
 - Transactions reported in GSTR-2A on which credit is not claimed so that the taxpayers can claim credit within prescribed time limit.
 - Transactions on which credit is claimed but not reported in GSTR-2A so that necessary action can be taken with the suppliers. If the credit is not reflected due to technological issues with GST portal, the taxpayers can consider taking credit after filing due intimation letters with the authorities.
- The taxpayers can also consider taking declaration from all the vendors that they have duly deposited GST on invoices issued in FY 17-18 to protect themselves.

4. Reversal of common credits used for making exempt supplies

- GST Law provides for reversal of input tax credit attributable to exempt supplies. The examples of exempt supply include high sea sales, bonded warehouse sales, merchanting sales, sale of scrips, sale of old cars under margin scheme (where margin is negative). It is important to note that there is no requirement to reverse credit for interest income as the amendment made w.e.f. January 23, 2018 can be considered as retrospective.
- Notably, **Notification No.11/2017-CT(R) dated June 28, 2017** provides for concessional rate of 5 percent on canteen and bus transportation services subject to the condition that no credit can be availed on goods and services used for making such supplies. Further, Explanation to the said Notification treats such supplies at par with exempt supplies. Thus, the taxpayers need to reverse input tax credit on such supplies.
- The reversal exercise is required to be done on monthly basis and the final amount needs to be calculated on yearly basis. Any adjustment (availment / reversal of excess credit) needs to be given effect by September 30 of the next FY. Accordingly, the taxpayers need to finalise the reversal workings for FY 17-18 before September 30, 2018.

5. GST Audit and annual reconciliation

- The GST law mandates compulsory audit by a Chartered Accountant or a Cost Accountant for every registered person whose turnover exceeds ` 2 crores in a financial year. The taxpayers are also required to submit reconciliation statement between books of accounts & GST returns and other prescribed documents along with their annual return. Notable that the format of annual return in Form GSTR-9 has recently been prescribed.
- The due date for undertaking this compliance is December 31, 2018.

6. Filing writ petitions where erstwhile credits have not been transitioned into GST regime

- After introduction of GST, the taxpayers were given an option to transition their old credits of excise duty, service tax, VAT etc. by filing Form TRAN-1 on GST portal. There were many IT glitches on GST portal because of which the credit could not be transitioned. During the last few months, there have been many favorable judgments of High Court wherein the Court has directed the GST Network to take necessary action for transitioning such credits of taxpayers.
- If the taxpayers have such cases where their old credits have not been transitioned due to IT issues, they can consider filing writ petitions before the jurisdictional High Courts.

7. Filing refund claims for taxes which were creditable

- Post advent of GST as well, there may be instances wherein the taxpayers need to pay customs duty, service tax etc. for the earlier period. For example, a taxpayer needs to deposit service tax for shortfall in payment of reverse charge liability or need to pay CVD and SAD due to non-fulfilment of export obligation under EPCG scheme.
- The GST Law does not prescribe a mechanism to claim credit or a refund of such taxes or duties paid. The taxpayers can explore the option to claim a refund of such amount paid.

We hope that you found the above update useful. Please feel free to contact in case any clarification is required.

Regards,

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