



## NITYA'S INSIGHT:

**Recent changes and clarifications under GST**

October 8, 2019 to January 12, 2020

## TABLE OF CONTENTS

<b>RECENT CHANGES AND CLARIFICATIONS UNDER GOODS AND SERVICES TAX ('GST').....</b>	<b>3</b>
<b>A. Changes proposed in 38<sup>th</sup> GST Council Meeting .....</b>	<b>3</b>
1. Legal Changes.....	3
2. Procedural Changes .....	4
3. Rate Changes .....	4
4. Grievance Redressal and check on tax evasion .....	4
<b>B. Other Changes .....</b>	<b>5</b>
1. E-Invoicing .....	5
2. Reverse charge mechanism ('RCM') on service of renting of motor vehicle.....	5
3. Rule 3B is now a return under Section 39 .....	5
4. Extension in time limit of GSTR-9 and GSTR-9C .....	6
5. Extension in powers of Commissioner to allow filing of TRAN-1 and TRAN-2 .....	6
6. Use of Document Identification Number ('DIN').....	6
7. Notified Changes of Union Budget 2019-20 .....	6
<b>C. Clarifications / Withdrawals.....</b>	<b>7</b>
1. GST rate on Job work services.....	7
2. Withdrawal of Circulars .....	7
3. GST on employee salaries .....	8

## RECENT CHANGES AND CLARIFICATIONS UNDER GOODS AND SERVICES TAX ('GST')

### A. Changes proposed in 38<sup>th</sup> GST Council Meeting and relevant Notifications

The GST Council in its 38<sup>th</sup> Meeting on December 18, 2019, recommended various legal, procedural and rate changes. We shared a snapshot of the key takeaways from this meeting in [NITYA's Insight | Issue 78 | Updates on 38th GST Council Meeting dated December 20, 2019](#). The Government has recently issued various Notifications to give effect to these changes, which have been discussed hereinafter.

#### **1. Legal Changes**

##### **Restriction on claim of Input Tax Credit:**

- The Government inserted Rule 36(4) in the Central Goods and Services Tax Rules, 2017 ('CGST Rules') to restrict availment of Input Tax Credit ('ITC') on invoices and debit notes not uploaded by the suppliers in GSTR-1, to the extent it exceeds **20 percent** of ITC on invoices and debit notes uploaded.
- This restriction has been now reduced from 20 percent to **10 percent** of eligible ITC.

***NITYA's Comments:** The revised limit of 10 percent will further increase working capital requirement of taxpayers whose unmatched credit exceeds 10 percent. This will further necessitate need of monthly reconciliation of ITC availed with Form GSTR-2A and will increase the compliance burden of the taxpayers.*

*Notably, the validity of Rule 36(4) of the CGST Rules has been challenged before the Gujarat and Delhi High Court and is pending for final disposal. In our view, the Courts are likely to strike down this provision for impossibility of taxpayers to comply the same.*

*[Refer Notification No. 75/2019-Central Tax dated December 26, 2019, Circular No. 123/42/2019-GST dated November 11, 2019 and Notification No. 49/2019-Central Tax dated October 9, 2019]*

*(Please refer to [NITYA's Insight | Issue 53 | Restriction for availing unmatched Input Tax Credit dated October 15, 2019](#) for our detailed update on restriction of ITC under Rule 36(4) of the CGST Rules)*

- **Blockage of e-way bill:** E-way bill generation shall be blocked for taxpayers who do not file Form GSTR-1 for any two tax periods.

***NITYA's Comments:** With effect from November 21, 2019, E-way bill generation is already blocked for taxpayers who do not file Form GSTR-3B for two tax periods. This amendment will further entangle taxpayers delinquent in filing their Form GSTR-1.*

*[Refer Notification No. 75/2019-Central Tax dated December 26, 2019]*



## 2. Procedural Changes

- **Waiver of late fee:** The late fee has been waived for taxpayers who file their pending Form GSTR-1 for the period July 2017 to November 2019 between December 19, 2019 to January 17, 2020.

*NITYA's Comments: Waiver of late fee shall be given to taxpayers who furnish the above details between December 19, 2019 to January 17, 2020. There is no provision to grant refund to taxpayers who have already paid late fee on filing of delayed returns.*

*[Refer Notification No. 04/2020-Central Tax dated January 10, 2020]*

## 3. Rate Changes

- **Upfront amount for long-term lease:** GST on upfront amount payable for long term lease of industrial / financial infrastructure plots by an entity having 20 percent or more ownership of Central / State Government, has been exempted effective January 1, 2020.

*[Refer Notification No. 28/2019-Central Tax (Rate) dated December 31, 2019]*

- **Lottery:** GST on lotteries run and authorized by the State Governments, shall be subject to a uniform rate of 28 percent from March 1, 2020.

*NITYA's Comments: An official Notification is yet to be issued by the Government in this regard.*

## 4. Grievance Redressal and check on tax evasion

- **Grievance Redressal Committee:** A Committee comprising of CGST and SGST officers including representatives of trade and industry and other GST stakeholders (such as GST practitioners and GSTN) is setup at Zonal / State level for redressal of specific / generic grievances of taxpayers.

*[Refer F. No. 20/10/16/2018-GST (Pt. I) dated December 24, 2019]*

- **Blockage of ITC:** Rule 86A has been inserted in the CGST Rules to empower Proper Officer to block fraudulently availed ITC in situations such as non-possession of valid document, non-existent place of business etc. to check menace of fake invoices. This restriction can be placed only for a period of 1 year.

*NITYA Comments: It is hoped that power to block ITC will not be exercised against genuine taxpayers.*

*[Refer Notification No. 75/2019-Central Tax dated December 26, 2019]*

- **SOP for tax officers:** A Standard Operating Procedure has been issued for tax officers detailing action to be taken against taxpayers not filing Form GSTR-3B.

*[Refer Circular No. 129/48/2019 – GST dated December 24, 2019]*

- The GST Council has proposed various law amendments in the GST statute that shall be introduced in Union Budget 2020. These amendments have not yet been made available in the public domain.

## B. Other Changes

### 1. **E-Invoicing**

- The GST Council approved the Schema (Standard technical specifications) of an Electronic Invoice in its 37th meeting, held on September 20, 2019. On December 13, 2019 and January 1, 2020, the Central Government issued various Notifications to align GST law on this aspect.
- With effect from April 1, 2020, a registered person with aggregate turnover exceeding ₹100 crores, is mandatorily required to generate an e-invoice for GST purposes.
- Please refer to [\*NITYA's Insight | Issue 84 | E-Invoicing - A Taxation and Business reform dated January 7, 2020\*](#) for our detailed discussion on the relevant Notifications, Schema and Template, Concept Note including FAQs etc.

*[Refer Notification No. 68/2019 to 72/2019-Central Tax dated December 13, 2019 and Notification No. 2/2020-Central Tax dated January 1, 2020]*

### 2. **Reverse charge mechanism ('RCM') on service of renting of motor vehicle**

- Vide **Notification No. 22/2019-CGST (Rate) dated September 30, 2019** ('Notification No.22/2019'), the Government introduced Reverse Charge mechanism ('RCM') on service of renting of motor vehicle provided by a non-body corporate to a body corporate.
- The requisite entries have now been amended and RCM has been made applicable to all non-body corporate suppliers who provide services to body corporate and does not issue invoice charging GST at the rate of 12 percent.
- The Government has also clarified that the above amendment, should be considered as retrospective

*NITYA's Comments: The present amendment has made RCM for renting of motor vehicles similar to services of Goods Transport Agency where the service provider has an option to charge GST at the rate of 12 percent (under FCM) if it intends to avail credit.*

*[Refer Notification No.29/2019-CGST (Rate) dated December 31, 2019 and Circular No. 354/189/2019-TRU dated December 31, 2019]*

*(Please refer to [\*NITYA's Insight | Issue 83 | Recent amendment in Reverse charge mechanism on service of renting of motor vehicle dated January 3, 2020\*](#) for our detailed discussion on this issue.)*

### 3. **Form GSTR-3B is a return under Section 39**

- The Government has amended Rule 61(5) of the CGST Rules to make Form GSTR-3B a return under Section 39(1) of the CGST Act with effect from July 1, 2017.

*[Refer Notification No. 49/2019-Central Tax dated October 9, 2019]*

*NITYA Comments: This amendment is made to overcome decision of Gujarat High Court in the case of **AAP and Co. v. Union of India, 2019-VIL-314-GUJ**. With this amendment, taxpayers who took credit of*

*FY 2017-18 post April 20, 2019, will need to reverse the same. Similarly, the taxpayers will not be allowed to avail ITC for FY 2018-19 post October 20, 2019. Please refer to [NITYA's Outlook | Issue 34 | Retrospective amendment in the CGST Rules - last date to avail Input Tax Credit for FY 2017-18 and FY 2018-19 dated October 30, 2019](#) and [NITYA's Insight | Issue 57 | Retrospective amendment in the CGST Rules - impact on liability to pay interest on delayed payment of taxes dated October 31, 2019](#) for our detailed view on impact of retrospective application of this amendment on availment of ITC and interest liability respectively.*

#### **4. Extension in time limit of filing Form GSTR-9 and Form GSTR-9C**

- The Government has extended time limit for filing annual return and reconciliation statement for financial year ('FY') 2017-18 and FY 2018-19 till January 31, 2020 and March 31, 2020 respectively.
- The Government has also simplified Form GSTR-9 and Form GSTR-9C to a major extent by amending particulars and instructions in these forms. Notably, these relaxations are only for FY 2017-18 and FY 2018-19 and not for subsequent financial years.

*[Refer **Order No. 10/2019-Central Tax** dated December 26, 2019 and **Order No. 8/2019-Central Tax** dated November 14, 2019]*

*(Please refer to [NITYA's Insight | Issue 68 | Amendment in CGST Rules\\_Extension of due date for filing annual return and reconciliation statement and simplification in formats of Form GSTR-9 and Form GSTR-9C dated November 22, 2019](#) for our detailed update on the amendments introduced in the annual compliance forms.)*

#### **5. Extension in powers of Commissioner to allow filing of TRAN-1 and TRAN-2**

- The Commissioner, on the recommendations of the GST Council, has been permitted to allow filing of TRAN-1 electronically till March 31, 2020 on account of technical difficulties.
- Taxpayers granted an extension as per above, can submit their declaration in TRAN-2 by April 30, 2020.

*[Refer **Notification No. 2/2020-Central Tax** dated January 1, 2020]*

#### **6. Use of Document Identification Number ('DIN')**

- The Government has clarified that GST and Customs authorities need to generate and quote DIN on all communications, as per prescribed format, sent to taxpayers / other persons effective November 8, 2019.

*[Refer **Circular No. 122/41/2019-GST** dated November 5, 2019, **Circular No.37/2019-Customs** dated November 5, 2019 and **Circular No.128/47/2019-GST** dated December 23, 2019]*

*(Please refer to [NITYA's Insight | Issue 64 | Document Identification Number \(DIN\) on all communications issued by GST and Customs authorities dated November 12, 2019](#) for our detailed update on this issue.)*

#### **7. Notified Changes of Union Budget 2019-20**

- The Government has notified various Sections of Finance (No.2) Act, 2019 introduced in Union Budget 2019-20 with effect from January 1, 2020. The relevant amendments, have been tabulated below for reference:

Section of Finance (No.2) Act, 2019	Section of CGST Act	Amendment	NITYA's Comments
99	Section 49 - Payment of tax, interest, penalty and other amounts (Similar change made in Section 17A of the Integrated Goods and Services Tax Act, 2017)	Sub-sections (10) and (11) are inserted to permit <i>inter-se</i> transfer of tax, interest, penalty or fee available in Electronic Cash Ledger of IGST, CGST, SGST, UTGST or Cess.	<i>The Relevant Rules under CGST Rules are yet to be notified in this regard.</i>
112	Amendment of Section 171 - Anti-profiteering measure	Sub-section (3A) inserted to impose penalty of 10 percent of profiteered amount. No penalty shall be imposed if profiteered amount is deposited within thirty days of the date of passing of order by Authority.	<i>In our view, such penalty should apply to orders passed post January 1, 2020.</i>

*[Refer Notification No. 1/2020-Central Tax dated January 1, 2020]*

## C. Clarifications / Withdrawals

### 1. **GST rate on job-work services**

- GST rate on machine job-work services (other than bus body building) had been reduced from 18 percent to 12 percent. The Government has clarified that concessional rate of 12 percent is applicable where the recipient of service is a registered person.

*[Refer Circular No. 126/45/2019-GST dated November 22, 2019]*

*(Please refer to [NITYA's Insight | Issue 73 | GST rate change on job-work services - Circular Update dated December 4, 2019](#) for our detailed update on this issue.)*

### 2. **Withdrawal of Circulars**

**GST on supply of ITes and back-end support services**

- The Central Board of Indirect Taxes and Customs ('CBIC') has withdrawn **Circular No.107/26/2019 - GST dated July 18, 2019**, clarifying applicability of GST on supply of Information Technology enabled Services ('ITeS') and back-end support services. The Circular clarified following key issues:
  - Services provided by supplier (back end ITeS services) on his own account to recipients or customers of recipients, will not qualify as intermediary service; and
  - Backend services for arranging or facilitating supply of goods or services like order placement and delivery and logistical support, obtaining relevant governmental clearances, transportation of goods, post-sales support and other services etc., will qualify as intermediary service

***NITYA's Comments:** The above withdrawal removes various controversial ambiguities vis-à-vis intermediary services for the time being. A fresh Circular containing clear guidelines on qualifying criterion of an 'intermediary', is expected soon. Please refer to **NITYA's Outlook | Issue 37 | Intermediary Service :: Key tests for determination dated January 6, 2020** capturing our detailed view on intermediary services.*

### **Post Sales Discount**

- The CBIC has withdrawn controversial **Circular No.107/26/2019 - GST dated July 18, 2019** vis-a-vis post sales discount.

***NITYA's Comments:** Contrary to expectations, the CBIC has withdrawn the entire Circular instead of the adversarial Para 4 relating to treatment of 'special reduced prices' as an additional consideration. The remaining pro-taxpayer clarifications in the Circular, also stand withdrawn. Please refer to **NITYA's Insight | Issue 33 | Clarifications on GST treatment of sales promotion schemes dated July 5, 2019** for our detailed view on this Circular.*

### **3. GST on employee salaries**

- The Government vide Press Release dated November 15, 2019 clarified that no GST shall be applicable on salaries of chief executives sitting in head offices.

***NITYA's Comments:** The above information is basis various newspaper articles and an official press release is not available in public domain till date. Please refer to **NITYA's Insight | Issue 67 | GST implications on employee salaries dated November 21, 2019** for our detailed discussion on this issue.*

### **Disclaimer:**

This Insight has been prepared for client and firm's personnel only. It is solely for the purpose of general information on the key tax changes and does not represent any opinion of NITYA Tax Associates. We are not responsible for the loss arising to any person for acting or refraining from acting on the basis of material contained in this insight. It is recommended that professional advice be sought based on specific facts and circumstances.

© NITYA Tax Associates. All Rights Reserved.





## Contact Us



### CALL US

+91 11 4109 1200  
+91 11 4109 1201



### MAIL US

[info@nityatax.com](mailto:info@nityatax.com)  
[www.nityatax.com](http://www.nityatax.com)



### REACH US

NITYA TAX ASSOCIATES,  
B-3/58, 3rd Floor,  
Safdarjung Enclave,  
New Delhi, 110029

