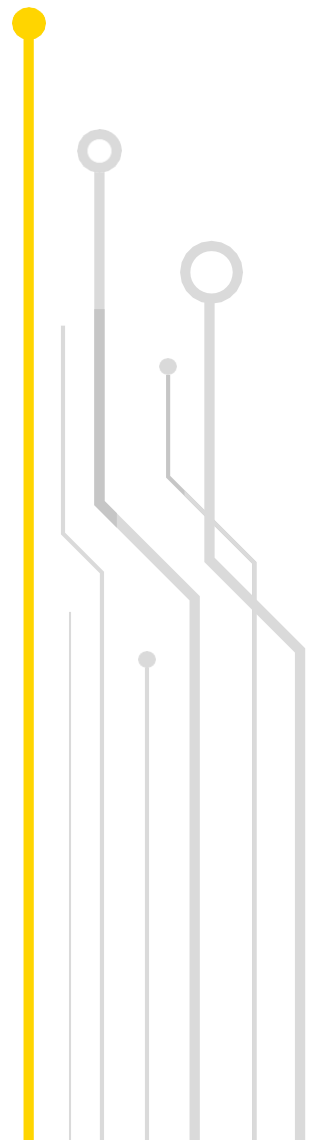


# GST Update

**Key Amendments in GST  
February 2019**

# *Executive Summary*

- **Scope of supply clarified**
- **Amendments in Schedule I and Schedule III**
- **Changes in the composition scheme**
- **Levy of GST under reverse charge mechanism on supplies from unregistered dealers**
- **Determination of time of supply- scope of tax invoice expanded**
- **Restrictions on the claim of input tax credit**
- **Determination of value of turnover for the purpose of distributing ISD credit and ITC reversal**
- **Cross utilisation of ITC rationalised**
- **Option to take multiple registrations within the same state**
- **Mandatory separate registration for SEZ unit in the same state**
- **Mandatory registration only for specified E-commerce operators**
- **Registration status to remain suspended during the process of cancellation of registration**
- **Amendments in place of supply provisions**
- **Amendments with respect to claim of refunds**
- **Amendment in the definition of ‘export of services’**
- **Amendments in the transitional provisions**
- **Commissioner to be empowered to extend the time limit for return of goods sent for job work**
- **Consolidated credit/debit note can be raised against multiple invoice**
- **Non applicability of GST audit for Govt. departments**
- **Ceiling on pre deposit for appeal filing**





### **Scope of the term supply clarified.**

Schedule II of CGST Act 2017 provides a list of transactions which shall be regarded either as supply of goods or as supply of services. The erstwhile Section 7(1) (d) provided that the term 'supply' would include activities specified under Schedule II.

However, the said clause has now been omitted and Section 7(1A) has been inserted in order to clarify that mere coverage of a transaction in Schedule II will not make it supply. Rather, it has to satisfy the test of 'supply' within clause (a) to (c) of section 7 (1). Having done so, reference could be made to Schedule II to determine as to whether it will be treated as 'supply of goods' or 'supply of services'.

*[Amendment with effect from 01.07.2017]*



### **New additions to Schedule III of the CGST Act**

Schedule III of CGST Act 2017 provides a list of transactions which shall be regarded neither as supply of goods nor as supply of services. CGST Amendment Act 2018 has inserted the following additional transactions in Schedule III:

1. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
2. Supply of warehoused goods to any person before clearance for home consumption; and
3. Supply of goods in case of high sea sales.

*[Amendment with effect from 01.02.2019]*



### **Import of Services from related person**

Schedule I of CGST Act 2017 provides a list of transactions which are treated as supply even if the same is made without consideration. Schedule I has been amended to provide that import of services by entities which are not registered under the Act but are otherwise engaged in business activities shall be liable to tax when received from a related person or from any of their establishments outside India.

*[Amendment with effect from 01.02.2019]*



### **Composition dealers to be allowed to supply services**

As per the erstwhile provisions, manufacturers and traders who were also engaged in the supply of services (other than restaurant services) were not eligible to opt for composition scheme. With a view to grant relief to these taxpayers, a new proviso has been inserted in Section 10 of the CGST Act 2017, extending the composition scheme to such tax payers other than the restaurant service providers, whose value of supply of services does not exceed 10% of the turnover in the preceding financial year in a State/Union territory or Rs.5 lakhs, whichever is higher.

*[Amendment with effect from 01.02.2019]*



### **Increase in threshold limit for composition scheme**

Section 10 of the CGST Act 2017 has been amended, to provide that the Government may on the recommendations of GST Council increase the upper limit of turnover for eligibility to opt for composition scheme to Rs.1.5 Crore from 1 Crore.

*[Amendment with effect from 01.02.2019]*



### **Tax rate applicable for suppliers eligible under composition scheme**

Pursuant to amendment in Section 10 of the CGST Act 2017, Rule 7 of the CGST Rules 2017 has also been amended vide Notification No. 3/2019 – Central tax, to clarify that, for tax payers other than manufacturers and restaurant service providers, tax shall be calculated at 1% of turnover of taxable supplies of both goods and services.

*[Amendment with effect from 01.02.2019]*







### **Levy of GST under reverse charge mechanism on inward supply from unregistered dealers.**

Section 9 of CGST Act 2017 has been amended to provide that, not all inward supplies from unregistered persons would be liable to RCM. Rather, it would be applicable only on the supply of specified goods or services made to a class of registered persons as notified by the Government on the recommendations of the GST council.

It is also pertinent to note here that the Notification 8/2017- Central Tax (Rate) which deferred the applicability of reverse charge on inward supplies from the unregistered dealers has been rescinded vide Notification 1/2019 – Central Tax (Rate) since such deferral is no more relevant.

*[Amendment with effect from 01.02.2019]*



### **Determination of time of supply on the basis of tax invoice**

Section 12 and 13 of CGST Act 2017 governs the provisions for determining time of supply with respect to the supply of goods and services. As per the above referred provisions, time of supply of goods or services shall be the earlier of the below:

- date of issue of invoice;
- last date on which the supplier is required to issue the invoice under GST Act; or
- date of receipt of payment.

The above provisions shall now apply to invoices issued under sub section (4) and (5) of section 31 for continuous supply of goods or services as well, thereby correcting the earlier existing anomaly.

*[Amendment with effect from 01.02.2019]*



### **Receipt of service – Deeming provision for claiming ITC extended to services as well.**

As per Section 16(2) of CGST Act 2017, receipt of goods and services by the registered person is one of the conditions for availing input tax credit under the Act. However, in the case of “bill-to-ship-to” situations, for the purposes of availing ITC on goods by the registered person, a deeming provision had been inserted vide explanation to Section 16(2) of CGST Act 2017. By virtue of this deeming provision, the registered person was deemed to have received the goods, even when the same were delivered to any other person.

Now, explanation to Section 16(2) of CGST Act 2017 has been amended to extend the above deeming fiction to services as well. Hence ITC can be claimed in the cases where services are contractually agreed to by the head office but physically rendered to the branch office.

*[Amendment with effect from 01.02.2019]*



### **Restriction on input tax credit - Motor vehicles**

Section 17(5)(a) of CGST Act 2017, which dealt with the restrictions on claiming input tax credit on motor vehicles has been amended to provide as below:

- Input tax credit can be claimed without any restriction on motor vehicles with seating capacity more than 13 passengers.
- Input tax credit can be claimed on motor vehicles with seating capacity lower than 13 passengers, provided they are used for making the following taxable supplies:
  - ❖ Further supply of such motor vehicles; or
  - ❖ Transportation of passengers; or
  - ❖ Imparting training for motor driving.
- Input tax credit can be claimed on vessels and aircrafts, provided they are used for making the following taxable supplies:
  - ❖ Further supply of such vessels and aircrafts; or
  - ❖ Transportation of passengers; or
  - ❖ Imparting training on navigating/flying such vessels/aircrafts; or
  - ❖ Transportation of goods.

It is worth mentioning here that there shall be no restriction on input tax credit with respect to the vehicles used for transportation of goods and other special purpose motor vehicles.

*[Amendment with effect from 01.02.2019]*





### **Restriction on input tax credit - General insurance, repairs and maintenance on vehicles**

Additional clause has been inserted within Section 17(5) of CGST Act 2017 to provide that input tax credit on general insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft shall be available only:

- when received by a person entitled to claim input tax credit with respect to the purchase of such motor vehicles; or
- when received by the manufacturer of such motor vehicles, vessels or aircrafts; or
- when received by a taxable person engaged in the supply of general insurance services in respect of such motor vehicles, vessels or aircrafts insured by him.

*[Amendment with effect from 01.02.2019]*



### **Restriction on input tax credit – Leasing, hiring or renting motor vehicles, aircraft or vessels**

Section 17(5)(b) CGST Act 2017 has been amended to provide that input tax credit with respect to leasing, renting or hiring of motor vehicles, vessels or aircraft would be admissible only in the following cases:

- when received by a person entitled to claim input tax credit with respect to the purchase of such motor vehicles; or
- where inward supply of such service is used by the registered person for making an outward taxable supply of same categories of goods or services or as an element of a taxable composite or mixed supply.

*[Amendment with effect from 01.02.2019]*







### **Restriction on input tax credit – Employee welfare related goods or services.**

Section 17(5)(b) has been amended to provide that input tax credit shall be available with respect to the following services rendered to the employees, provided it is obligatory for an employer to provide such services to the employees under any law in force:

- food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery;
- leasing renting or hiring of motor vehicles, vessels or aircraft;
- life insurance and health insurance;
- membership of a club, health and fitness centre; and
- travel benefits extended to employees on vacation.

It is worth mentioning here that though the intention of the amendment seems to be as above, the punctuations inserted in the amendment act can also lead to an interpretation that the relief is limited only to travel benefits extended to employees. Necessary clarification is expected from the Government in this regard.

*[Amendment with effect from 01.02.2019]*



### **Input tax credit reversal not required on transactions covered in Schedule III**

Explanation to section 17 (3) has been inserted to provide that where a person is engaged in providing taxable supplies as well as transactions covered under Schedule III (transactions not treated as supply), such person need not consider the transactions covered under Schedule III as 'exempt supply' while computing reversal of input tax credit. However, value of supply being sale of land or sale of building after completion of construction shall continue to be considered as 'exempt supply'.

*[Amendment with effect from 01.02.2019]*



### **Determination of turnover- Reversal of credit and distribution of credit by ISD**

Explanation to Section 20 of the CGST Act 2017 has been amended to exclude the amount of tax levied under entry 92A of List 1 i.e. CST leviable on the goods. Further, consequential amendment is also made in explanation to Rule 42(1) (i) and Rule 43 (1) (g) to provide for the same.



Hence all type of taxes levied on the goods which are outside the scope of GST would be excluded for the computation of turnover for the purpose of distribution of credit by ISD and reversal of input tax credit.  
[Amendment with effect from 01.02.2019]



#### Utilisation of ITC rationalised

The order of cross-utilization of input tax credit has been rationalized. Section 49 of the CGST Act 2017 has been amended as a result of which, the credit of SGST/UTGST can be utilised for payment of IGST only after exhausting available CGST input credit.

Further a new section 49A has been inserted, which states that the balance of IGST credit is to be first utilized against payment of IGST, CGST & SGST/UTGST; only when the balance in IGST is fully exhausted, balance in CGST & SGST can be utilized.

[Amendment with effect from 01.02.2019]

GST Liability	Order of utilization of input tax credit	
	Before amendment	After amendment
IGST	IGST>CGST>SGST	IGST>CGST>SGST
CGST	CGST>IGST	IGST>CGST
SGST	SGST>IGST	IGST>SGST



#### Option to take multiple registration within the same state

Proviso to Section 25(2) of CGST Act 2017 has been amended to provide that taxpayers can now opt for multiple registrations within a State/Union territory in respect of multiple places of business located within the same State/Union territory, provided the following conditions are met:

- such person has more than one place of business as defined in clause (85) of section 2; and
- such person shall not pay tax under section 10 (composition scheme) for any of his places of business if he is paying tax under section 9 (regular) for any other place of business.

Thus the requirement to have multiple business vertical to obtain separate registration has been dispensed with. Consequently, Rule 41A has been inserted to provide that a registered person who has obtained separate registration for multiple places of business in the above referred manner may transfer the unutilised input tax credit lying in his electronic credit ledger in proportion to the value of assets held by them at the time of registration.

[Amendment with effect from 01.02.2019]



### **Mandatory separate registration for SEZ unit within the same state.**

Prior to CGST Amendment Act 2018, there was no specific provision in the principal act that mandates separate registration for a SEZ unit. However, Rule 8 of CGST Rules 2017 provided that SEZ unit shall have to take a registration separate from his place of business outside the SEZ area. Presently this provision has been inserted in the Act and the same has been omitted from the Rules.

*[Amendment with effect from 01.02.2019]*



### **Mandatory registration only for specified category of E-commerce operators**

Prior to the amendment, Section 24 of the CGST Act held that every electronic commerce operator shall be liable to obtain compulsory registration under GST. However, the amendment makes registration mandatory only for those e-commerce operators who are liable to collect tax at source under section 52 of the Act

*[Amendment with effect from 01.02.2019]*



### **Registration status to remain suspended during the process of cancellation of registration**

Normally, there is a time gap between applying for surrender of registration and actual cancellation. There was ambiguity as to whether registered persons are required to make compliance of law in the intervening period. In view of the above, Rule 21A has been inserted in the CGST Rules 2017 with effect from 01.02.2019 providing that registration shall remain temporarily suspended while cancellation of registration is under process. The amendment has thereby done away the requirement of making compliance in the intervening period.

*[Amendment with effect from 01.02.2019]*





### **Simplified return procedures and formats**

Section 43A has been inserted for prescribing the procedure for furnishing return and availing input tax credit. The recipient is required to verify, validate, modify or delete the details entered by the supplier. Also, a new procedure for ITC availment has been prescribed under this section. However the date from which these provisions shall be applicable, is yet to be notified.



### **Place of supply of goods transportation services**

Proviso has been inserted in Section 12(8) of the IGST Act 2017 to provide that the place of supply for services of transportation of goods, where the transportation of goods is to a place outside India, will be the place of destination of such goods, when the location of the supplier and recipient of services are in India. Further, as per Section 7(5)(a) of IGST Act 2017, supply of services when the supplier is located in India and place of supply is outside India shall be treated as inter-state supply. In view of the above, IGST shall be levied on the transactions referred above henceforth.

*[Amendment with effect from 01.02.2019]*



### **Place of supply of goods imported for job work and exported without putting them to any use**

As per Section 13(3) of IGST Act 2017, place of supply of services with respect to the goods that required to be made physically available to the service provider was the location where the service was actually performed. However vide proviso to Section 13(3) of IGST Act 2017, exception from this rule had been made with respect to goods which are temporarily imported into India for repairs and exported after repairs without being put to any other use in India.

The scope of this exception has been expanded whereby not only repair services, but any other treatment or process which is required to be carried out in respect of such goods has also been included within the scope.

*[Amendment with effect from 01.02.2019]*





### **GST Refund shall not be available to the supplier against IGST paid on supplies to SEZ**

Section 54 of CGST Act 2017 has been amended to provide that refund of tax paid on supplies of goods and services to SEZ developer or SEZ unit shall be credited to the Consumer Welfare Fund and shall not be paid to the applicant. Consequent amendment has been made in the Rule 89(2) to provide that at the time of filing of refund for supplies made to SEZ, the supplier will now have to submit a declaration that tax has not been collected from the SEZ. Also, going forward, SEZ's are not required to provide the declaration stating that ITC has not been availed.

*[Amendment with effect from 01.02.2019]*



### **Modification of relevant date in case of refund of unutilised credit**

As per Section 54(1) of the CGST Act, any person claiming refund of tax may make an application before expiry of two years from the relevant date. Prior to the amendment, relevant date with respect to the refund of unutilised credit was the end of the financial year. However Section 54 has been amended to provide that relevant date for calculation of time period for refund of unutilised ITC shall be the due date for furnishing the return under section 39 for the period in which the claim arises.

*[Amendment with effect from 01.02.2019]*



### **Payment received in Indian Rupees shall also qualify as export of services**

Prior to the amendment Section 2(6) of the IGST Act which defines 'export of services' provided one of the condition that services shall qualify as exports when the payment for such service has been received in convertible foreign exchange. In order to avoid hardships to genuine exporters of services, Section 2(6) has been amended to provide that the services would be considered as export of services even if the payment is received in INR provided it is permitted by RBI.

*[Amendment with effect from 01.02.2019]*





### Amendment in transitional provisions

Section 140 of the principal act has been amended to provide that the tax payer shall not be eligible to carry forward the transitional credit of Education Cess, Secondary and Higher Education Cess, Krishi Kalyan Cess and similar other cesses from erstwhile Law to GST regime. The amendment has been given retrospective effect from 01.07.2017.

*[Amendment with effect from 01.07.2017]*



### Commissioner to be empowered to extend the time limit for return of goods sent for jobwork

Presently for receiving the inputs and capital goods back from the job worker there is a time limit of one year and three year respectively. Now the Commissioner has been empowered to extend the time limit for return of inputs and capital goods sent on job work for a further period, up to one year and two years, respectively.

*[Amendment with effect from 01.02.2019]*



### Miscellaneous amendments

- **Consolidated credit/debit notes:**

Registered persons can now issue consolidated credit/debit notes in respect of multiple invoices issued in a Financial Year.

- **Exemption from GST Audit:**

Mandatory GST audit by Chartered Accountant or Cost accountant for persons whose turnover exceeds prescribed limit under section 35(5) is not applicable to the departments of Central and State Government who are subject to audit by Comptroller and Auditor General of India or where an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

- **Ceiling limit on pre-deposit for filing appeal:**

Amount of pre-deposit payable for filing of appeal before the Appellate Authority and the Appellate Tribunal has been capped at Rs. 50 Crores and Rs. 100 Crores, respectively.

*[Amendment with effect from 01.02.2019]*

