



Recent Changes in GST

Payment of Interest on Incorrect availment of Input Tax Credit

Section 50(3) has been substituted with retrospective effect from 1st July, 2017. Presently, the department has been charging interest on input tax credit wrongly taken even if not utilised. The substitution of section 50(3) clarifies that interest is to be charged on input tax credit wrongly availed only if the credit has been utilised. Therefore, interest is levied on input tax credit **only if wrongly availed ‘and’ utilised**. It is a welcome step to end all litigation in relation to interest levied on the input tax credit wrongly availed but not utilised. Rule 88B has been inserted with retrospective effect from 1st July, 2017 to clarify the method of calculation of interest.

Following is a table given for better understanding:

Section	Reason	Amount on which interest to be paid	Period
Interest under section 50(1)	Delay in filing of GSTR 3B	Amount debited from the electronic cash ledger	period of delay in filing the said return beyond the due date
Interest under section 50(1)	Cases other than delay in filing of return – Section 73 and Section 74	Amount of tax which remains unpaid	period starting from the date on which such tax was due to be paid till the date such tax is paid
Interest under section 50(3)	Input tax credit wrongly availed and utilized	Amount of input tax credit wrongly availed and utilised	period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount

Annual Return for FY 2021-22

No Annual Return to be filed by Registered Persons whose aggregate turnover in the financial year 2021-22 is up to two crore rupees. It is important to note that for FY 2021-22, annual return includes the Annual Reconciliation Statement. Therefore, the turnover limit for both GSTR 9 and 9C for FY 2021-22 is 2 crores. Till FY 2020-21, GSTR 9C was required to be filed only by entities whose Annual Turnover exceeded Rs 5 crores.

Transfer of Balance in Electronic Cash Ledger from one branch to another

Substituted section 49(10) notified w.e.f. 5th July, 2022 to allow transfer of balance in cash ledger from one branch to other under the same PAN but different GSTIN. Rule 87(14) inserted to provide the mechanism for the same. Form GST PMT-09 will be the notified form for the transfer.

Due Date for Filing Returns

Due date for filing FORM GST CMP-08 for the quarter ending 30th June, 2022 extended till the 31st day of July, 2022.

Due date for filing FORM GSTR 4 for FY 2021-22 extended till 28th July, 2022

Increase in Period of Limitation

Time Limit for issue of order under section 73(9) for FY 2017-18 has been extended to 30th September, 2023. Therefore, show cause notices can be issued for FY 2017-18 till anytime upto 30th September, 2023 and books of accounts and documents should accordingly be maintained by all Registered Tax Persons.

The period of 2 years from 1st day of March, 2020 to the 28th day of February, 2022 has been excluded from the limitation period for issue of order under section 73(9). Therefore, effectively, orders under section 73(9) can be issued for five years from the due date for furnishing of annual return for the financial year 2017-18, 2018-19 and 2019-20. Similarly, **while calculating the due date for filing refund, the above 2 years can be ignored. This will increase the window for applying for old refunds.**

Automatic Re Credit of Electronic Credit Ledger

Rule 86(4A) inserted to provide for automatic re credit of electronic credit ledger where the erroneous refund has been duly paid with interest and penalty. Order for recredit to be made in FORM GST PMT-03A by the concerned officer **preferably within a period of 30 days** from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

In respect of the following categories of refund sanctioned erroneously, re-credit of amount in the electronic credit ledger can be done through FORM GST PMT-03A, on deposit of such erroneous refund along with interest and penalty, wherever applicable, by the taxpayer:

- a. Refund of IGST obtained in contravention of sub-rule (10) of rule 96.
- b. Refund of unutilised ITC on account of export of goods/services without payment of tax.
- c. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
- d. Refund of unutilised ITC due to inverted tax structure.

Refund of Input Tax Credit in case of Exports under LUT

While computing the amount of refund, there has always been a confusion regarding the value of exported goods as goods are often exported at CIF value while the ICEGATE reflects the FOB value. Explanation to Rule 89(4) has been inserted to clarify that the value of goods exported shall be taken as lower of the following:

- (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form or
- (ii) the value declared in tax invoice or bill of supply,

Refund of Input Tax Credit in case of Inverted Duty Structure

Presently, there is a loss of input tax credit availed on services to the persons claiming refund under the Inverted Duty Structure. The same was litigated

before the Apex Court in *Union of India v. VKC Footsteps India Private Limited*, where the Supreme Court suggested that the practical effect of the existing formula of Inverted Duty Structure might result in certain inequities and strongly urged the GST Council to reconsider the formula and take a policy decision regarding the same.

Subsequent to the judgement, on the recommendation of the GST Council, the **formula of inverted duty structure has been changed to reduce the loss of input tax credit availed on services to the persons claiming refund under the Inverted Duty Structure.**

The new formula is as follows:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - {tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}

Amendment in Form GSTR 3B

Details of supplies made by and made to electronic commerce operators to be furnished separately in the following format

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(i) Taxable supplies on which electronic commerce operator pays tax under sub-section (5) of section 9 [to be furnished by the electronic commerce operator]					
(ii) Taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax					

under sub-section (5) of section 9 [to be furnished by the registered person making supplies through electronic commerce operator].";					
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- ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period to be shown separately
- Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions to be shown separately

Further Clarifications regarding Form GSTR 3B are as follows:

- Inter state supplies made to unregistered persons should be duly disclosed place of supply-wise, in Table 3.2 of FORM GSTR-3B and Table 7B or Table 5 or Table 9/10 of FORM GSTR-1
- Inter- state Supplies to composition dealers and to UIN Holders should be duly reported place of supply-wise, in Table 3.2 of FORM GSTR-3B and Table 4A or 4C or 9 of FORM GSTR-1,
- Efforts should be made to update customer database to ensure correct address and Place of supply is declared in the Tax Invoice.
- Any amendment in GSTR 1 should be duly reflected in GSTR 3B
- Disclosure of Input Tax Credit in GSTR 3B –
 - any deviation from the auto populated figure from GSTR 2B has to disclosed in under the correct head

- Reversal of following ITC, which are absolute in nature and are not reclaimable on following account should be shown in Table 4 (B) (1)
 - Rule 38 - reversal of credit by a banking company or a financial institution
 - rule 42 - reversal on input and input services on account of supply of exempted goods or services
 - rule 43 - reversal on capital goods on account of supply of exempted goods or services
 - Ineligible ITC under section 17(5)

Since, details of ineligible ITC under section 17(5) are being provided in Table 4(B), no further details of such ineligible ITC will be required to be provided in Table 4(D)(1).

- Reversal of following ITC, which are not permanent in nature and can be reclaimed in future should be shown in Table 4 (B) (2)
 - rule 37 of CGST Rules (non-payment of consideration to supplier within 180 days),
 - section 16(2)(b) and
 - section 16(2)(c)
- All reclaimed ITC shall also be shown in Table 4(D)(1)
- ITC not available, on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply in Table 4D (2). Such details are available in Table 4 of FORM GSTR-2B.
- Therefore, reversal of ITC of ineligible credit under section 17(5) or any other provisions of the CGST Act and rules thereunder is required to be made under Table 4(B) and not under Table 4(D) of FORM GSTR-3B.

Clarifications relating to Fake Invoicing

Case 1 - Registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both

As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against ‘A’ for the said transaction, and accordingly, no demand, recovery or penalty is required to be made against ‘A’ under the provisions of section 73 or section 74 of CGST Act in respect of the same.

The registered person ‘A’ shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.

Case 2 - A registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by ‘A’, for payment of his tax liability in respect of his said outward

supplies.

Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, she shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.

Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122.

Miscellaneous Clarifications

- Perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST
- Any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person
- electronic credit ledger can be used for making payment of output tax only. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
- In cases where the supplier is required to supply goods at a lower rate under Concessional Notification issued by the Government - refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.
- Rule 96 has been duly amended to provide for refund to risky exporters through a system generated **FORM GST RFD-01**.

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