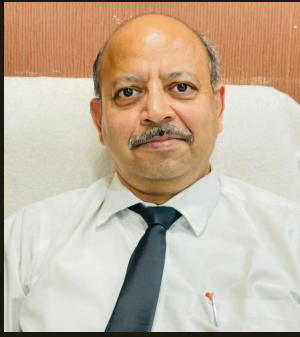


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# NEWSLETTER

## AJAY RATTAN & CO

### Chartered Accountants

Newsletter for January'23  
Volume 13, Issue 1



### IN THIS ISSUE:

|            |    |
|------------|----|
| TITLES     | 1  |
| DUE DATES  | 2  |
| INCOME TAX | 3  |
| GST        | 5  |
| DISCLAIMER | 14 |



## DUE DATES | JANUARY 2023

| Due Date               | Compliance Detail  | Applicable To   |
|------------------------|--|---|
| <b>7<sup>th</sup></b>  | a) TDS/ TCS deposit<br>b) Equalization Levy deposit  | a) Non- Government deductors.<br>b) All Deductors   |
| <b>10<sup>th</sup></b> | a) GSTR – 7 (TDS return under GST)<br>b) GSTR – 8 (TCS return under GST)                                 | a) Person required to deduct TDS under GST<br>b) Person required to collect TCS under GST   |
| <b>11<sup>th</sup></b> | GSTR – 1 (Outward supply return)   | <ul style="list-style-type: none"> <li>• Taxpayers having annual turnover &gt; Rs. 5 crore in FY 2021-22</li> <li>• Taxpayers having annual turnover ≤ Rs. 5 crore in FY 2021-22 and not opted for QRMP Scheme</li> </ul>   |
| <b>13<sup>th</sup></b> | a) GSTR – 1 (Outward supply return)<br>b) GSTR-6 [Return by input service distributor]                   | a) Taxable person having turnover ≤ Rs. 5 crore in FY 2021-22 and opted for QRMP Scheme<br>b) Person registered as ISD  |
| <b>15<sup>th</sup></b> | a) Deposit of PF & ESI contribution<br>b) Form 27EQ-TCS return   | a) All Deductors<br>b) All Collectors   |
| <b>20<sup>th</sup></b> | a) GSTR-5 (Return by Non-resident)<br>b) GSTR-5A (OIDAR) services return]<br>c) GSTR-3B (Summary return) | a) Non-resident taxable person<br>b) OIDAR services provider<br>c) <ul style="list-style-type: none"> <li>• Taxpayers having annual turnover &gt; Rs. 5 crore in FY 2021-22</li> <li>• Taxpayers having annual turnover ≤ Rs. 5 crore in FY 2021-22 and not opted for QRMP scheme</li> </ul>  |
| <b>22<sup>nd</sup></b> | GSTR 3B (Summary return)   | Taxpayers having annual turnover ≤ Rs. 5 crores in FY 2021-22 and opted for QRMP scheme and having principal place of business in Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep. |
| <b>24<sup>th</sup></b> | GSTR 3B (Summary return)   | Taxpayers having annual turnover ≤ Rs. 5 crore in FY 2021-22 and opted for QRMP scheme and having principal place of business in any other state.   |
| <b>31<sup>st</sup></b> | TDS Return   | All deductors   |



## **CBDT allows Non-residents to submit Form 10F manually till 31<sup>st</sup> March 2023**

Income received by non-residents from India are usually taxable in India and if so, requires withholding of tax at source by the Indian payer. The withholding tax rate depends on nature of income and legal status of the non-resident. Depending on the nature of income, the withholding tax rate may be lower than the usual rate *provided* the non-resident is able to submit a tax residency certificate and / or declaration in Form 10F with the tax authorities.

The Form 10F requires following main information to be furnished by the non-resident:

- Status (such as individual / company / firm, etc.)
- Permanent Account Number (PAN)
- Nationality
- Tax identification number in the home country
- Address in the home country

By virtue of Notification no. 3 dated 16<sup>th</sup> July 2022 issued by CBDT, Form 10F was required to be submitted electronically on the income-tax portal. This is possible only if the applicant has an existing PAN, because otherwise, it is not possible to log-in to the income-tax portal. Hence, this led to a major inconvenience for non-residents who were otherwise not required to obtain PAN as per the Income-tax laws of India.

In order to address the above issue, CBDT has allowed those non-residents who do not have an existing PAN or are not required to have a PAN as per Income-tax law, to submit Form 10F manually (instead of electronically) till 31<sup>st</sup> March 2023.

# INTERNATIONAL TAX

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## **Investment from countries sharing land border with India – Prior approval required from Government of India for allotment of Director Identification No. (DIN) & appointment of Director for nationals belonging to such countries - MCA launches new online portal ‘E-Sahaj Sewa’ for security clearances of such citizens**

Ministry of Corporate Affairs vide notification dated 1<sup>st</sup> June 2022 had amended Rule 8 and 10 of the Companies (Appointment and Qualification of Directors) Rules, as below:

- In case of allotment of DIN to any individual who is citizen of a country sharing land border with India, he shall be required to obtain prior approval from the Government of India before filing the application for DIN allotment in Form DIR-3. Copy of Government’s approval shall be enclosed along with his application for DIN in Form DIR-3
- In case any individual who is citizen of a country sharing land border with India, is to be appointed as a director in any Indian company, he shall be required to obtain prior approval from the Government of India before his appointment as director. Copy of Government’s approval shall be enclosed along with his consent to act as director in Form DIR-2.

With effect from 15<sup>th</sup> December, 2022 onwards, MCA has launched ‘E-Sahaj Sewa’ online portal for security clearance of all applications received from citizens of countries sharing land border with India for:

- Allotment of DIN
- Appointment as director in any new / existing company in India

E-Sahaj Sewa shall be a single online interface platform to provide the security clearance service only for DIN and director appointment related services. For other services such as receipt of Foreign Direct Investment (FDI) from entities / citizens of countries sharing land border with India, a separate online portal ‘National Single Window System’ under the umbrella of Department for Promotion of Industry and Internal Trade (DPIIT) has already been launched since September 2021 onwards.





## ***Notification 26/2022/CGST dated 26.12.2022 - V Amendment Rules, 2022***

Significant changes made through these rules are:

1. If the supplier of goods or services has not filed its GSTR-3B upto 30<sup>th</sup> September for previous year, the recipient of supplies is required to reverse the input-tax credit availed till 30<sup>th</sup> November from such supplier. The credit will be available again on filing of GSTR-3B by the supplier.
2. The exemption given from e-way generation to Jewellery is not applicable on 'imitation jewellery' and hence, e-way is required for transport of 'imitation jewellery'.

## ***Notification 15/2022/CGST (Rates) dated 30.12.2022 - change in exemption notification no. 13/2017/ CGST (Rates)***

The exemption notification was amended w.e.f., August 2022 to provide that residential premises taken on lease by registered persons are not exempt from GST and such persons have to deposit GST on reverse charge basis. This amendment suddenly increased the cost of living for registered persons specially individuals who are registered due to supply of services other than business like landlords giving renting services etc. In order to mitigate their hardship, the following explanation has been inserted in S. No. 12 of exemption notification w.e.f., 1<sup>st</sup> January 2023:

Explanation. - For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, –

- (i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and
- (ii) such renting is on his own account and not that of the proprietorship concern.”

### ***Circular 183/15/2022 dated 27.12.2022***

### ***Clarification to deal with discrepancies between Input Tax Credit (ITC) availed in Form GSTR-3B (summary return) viz-a-viz ITC reflected in Form GSTR-2A (auto populated ITC statement) for Financial Years (FYs) 2017-18 & 2018-19***

During the initial period of implementation of GST, in many cases, many suppliers have failed to furnish the correct details of supplies made in Form GSTR-1 (statement of outward supplies), which led to certain discrepancies in Form GSTR- 2A of their recipients. However, the concerned recipients may have availed ITC on the said supplies even though the same were not auto-populated in Form GSTR-2A. The discrepancies between the amount of ITC availed in Form GSTR-3B as compared with the amount auto-populated in Form GSTR-2A are being noticed by the tax officers during their investigation. GST officers considered those discrepancies as ‘Ineligible ITC’ availed by the taxpayers and have flagged those taxpayers seeking explanation for such discrepancies.

The restrictions regarding availment of ITC upto specified limits beyond the ITC available in Form GSTR-2A were provided and applicable with effect from 9<sup>th</sup> October, 2019 onwards. However, the availability of ITC was subject to conditions specified u/s 16 of CGST Act, 2017 with effect from 1<sup>st</sup> July, 2017 itself. In view of this, various representations have been received by the Government seeking clarifications regarding the manner of dealing with such discrepancies for FY 2017-18 and 2018-19.

In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

| Scenario  | Clarification  |
|---|--|
| <p>Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.</p>   | <p>Tax officer shall follow the below procedure:</p> <ul style="list-style-type: none"> <li>• He shall first seek the details from the recipient regarding all the invoices which are not reflecting in Form GSTR-2A, but ITC has been availed in Form GSTR-3B. He shall then ascertain the fulfillment of following conditions for availment of ITC:</li> </ul>   |
| <p>Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.</p>   | <ul style="list-style-type: none"> <li>✓ Recipient is in the possession of tax invoice, or any other document issued by supplier</li> <li>✓ Recipient has received the goods or services</li> <li>✓ Recipient has made payment to the supplier</li> </ul>  |
| <p>Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.</p> | <ul style="list-style-type: none"> <li>• He shall then verify the payment of GST on said supply by the supplier as below:</li> <li>✓ Where the difference amount &gt; Rs. 5 lakh, the GST officer shall ask the recipient to produce a certificate by Chartered Accountant (CA) or Cost Accountant (CMA) certifying in respect of the said invoices that supply has actually been made by the supplier to the recipient and the tax on such supplies has been paid by the supplier</li> <li>✓ Where the difference amount ≤ Rs. 5 lakh, the GST officer shall ask the recipient to produce a self-certified certificate from the concerned supplier declaring in respect of said invoices that supply has actually been made by the supplier to the recipient and the tax on such supplies has been paid by the supplier.</li> </ul> |
| <p>Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.</p>  | <ul style="list-style-type: none"> <li>✓ In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.</li> </ul>   |

Further, CBIC clarifies that the said guidelines will only apply to the ongoing proceedings in scrutiny/ audit/ investigation etc. for FY 2017-18 & FY 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for the said years where any adjudication or appeal proceedings are still pending.

## ***Circular 184/16/2022 dated 27.12.2022***

### ***CBIC clarifies regarding entitlement of ITC in respect of services by way of transportation of goods***

As per section 12 of Integrated Goods & Services Tax (IGST) Act, 2017, *the place of supply* of services by way of transportation of goods to a registered taxpayer shall be the location of the taxpayer.

An amendment was made from 1<sup>st</sup> February 2019 onwards, as per which the place of supply in case of transportation of goods to a *place outside India*, shall be the *place of destination of such goods*. In such cases, as the place of supply will be the concerned foreign destination and not the state where the recipient is registered under GST, doubts have been raised regarding the availability of ITC to the recipient.

Accordingly, CBIC has clarified the below in respect of supply of services by way of transportation of goods outside India (including by mail or courier).

| <b>Issue</b>   | <b>Clarification</b>                                |
|--|---|
| Where both supplier and recipient of the aforesaid supply are located in India, what would be the place of supply?                         | Place of destination of such goods (i.e., overseas) |
| Whether the aforesaid supply of service shall be treated as intra-state supply or inter-state supply?                                      | Inter-state supply (IGST would be chargeable)       |
| Whether the recipient would be eligible to avail ITC in respect of IGST charged by the supplier of such aforesaid services?                | Yes   |
| What is the state code that needs to be mentioned by the supplier of aforesaid service while reporting the place of supply in Form GSTR-1? | 96-Foreign Country                                  |

## ***Circular 185/17/2022 dated 27.12.2022***

### ***CBIC issues clarification regarding time limit for re-computation of GST liability by tax authorities, if charges of fraud, wilful-misstatement or suppression of facts is not established against a taxpayer***



The CGST Act provides as follows:

| Relevant section of CGST Act<br>(A) | Determination of outstanding GST liability by GST officer due to:<br>(B)          | Time period for issue of notice by GST officer<br>(C)  | Time period for issue of order by GST officer<br>(D) |
|-------------------------------------|---|--|--|
| 73                                  | Reasons other than fraud, wilful misstatement or suppression of facts by taxpayer | 2 years and 9 months from the due date of: <ul style="list-style-type: none"> <li>Furnishing GST annual return, or,</li> <li>In case the refund has been granted erroneously, the date of grant of erroneous refund</li> </ul> | 3 years from date of notice                          |
| 74                                  | Fraud, wilful misstatement or suppression of facts by taxpayer                    | 4 years and 6 months from the due date of: <ul style="list-style-type: none"> <li>Furnishing GST annual return, or,</li> <li>In case the refund has been granted erroneously, the date of grant of erroneous refund</li> </ul> | 5 years from date of notice                          |

Further, as per section 75, in case the appellate authority / court decides that notice u/s 74 above is not sustainable for the reason that the charges of fraud, wilful-misstatement or suppression of facts has not been established, the GST officer shall compute the GST payable as per section 73 above (and not 74).

Doubts were raised regarding the *time limit* within which the GST officer is required to re-compute the GST liability in case a situation under section 75 arises, because in such situation the time limit of 3 years for passing order u/s 73 would have expired.

To address the above issue, CBIC has clarified the below:

- GST officer is required to issue the order of re-computation of GST liability within 2 years from the date of communication of order of appellate authority / court u/s 75

Further, in case where the notice u/s 74 was issued beyond the period of 2 years and 9 months as mentioned in (c) above, the entire proceedings will have to be dropped, being hit by the time limitation u/s 73.

## ***Circular 186/18/2022 dated 27.12.2022***

### ***CBIC clarifies issues on taxability of No Claim Bonus (NCB) offered by insurance companies***

As per the industry practice in insurance sector, when no claim is made by an insured person during the preceding year, insurance companies deduct No-Claim Bonus (NCB) from the gross premium amount due. Doubts have been raised regarding the taxability of NCB, which CBIC has clarified as below:

| <b>Issue</b>   | <b>Clarification</b>   |
|--|--|
| Whether the deduction on account of NCB from the insurance premium payable, can be considered as consideration for supply? | No.  |
| Whether NCB can be considered as an admissible discount for the purpose of valuation of supply?                            | Yes. GST is leviable on net insurance premium after reducing the amount of NCB mentioned in the invoice. |

### ***Applicability of e-invoicing***

As per Notification no. 13/2020 – Central Tax dated 21 March 2020, certain entities/ sectors such as insurance companies, banking companies, non-banking financial institutions and goods transportation agencies etc. have been exempted from mandatory generation of e-invoices. Reportedly, doubts have been raised whether the exemption is available for the entity as a whole or whether the same is available only in respect of certain supplies made by the entity. CBIC has clarified that the exemption is available for the entity as a whole and not restricted by the nature of supply made by the entity.

***CBIC issues clarification regarding treatment of statutory dues under GST law in respect of taxpayers for whom proceedings have been finalized under Insolvency & Bankruptcy Code, 2016 (IBC)***

As per Section 84 of CGST Act, if the Government dues against any person under CGST Act are reduced as a result of any appeal, revision or '*other proceedings*' in respect of such Government dues, then an intimation for such reduction of Government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of Government dues. The phrase '*other proceedings*' is not defined in CGST Act.

It was clarified in March 2020 that no coercive action can be taken against a corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer with the National Company Law Tribunal (NCLT) as per provisions of the IBC.

Representations have been received by CBIC from the industry, seeking clarification regarding the modalities for implementation of the order of NCLT under IBC with respect to treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC.

Since the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appears to be covered under the term '*other proceedings*' in section 84 of CGST Act.

In cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in Form GST DRC-07/DRC 07 against the corporate debtor, and where the proceedings have been finalized against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the Government under CGST Act or under existing laws, the Commissioner of GST shall issue an intimation in Form GST DRC-25 reducing such demand, to the taxpayer as well as the appropriate authority with whom recovery proceedings are pending.

## ***Circular 188/20/2022 dated 27.12.2022***

### ***CBIC prescribes manner of filing application for refund by unregistered buyers in case of cancellation of agreement for supply of services***

Where any unregistered buyer enters into a long-term agreement of services (like construction of flat / house) and pays GST to the seller, and subsequently the contract is cancelled and the time limit (30 November of subsequent year) for issue of credit note by the seller is also over, there is no procedure to claim the refund of GST by the buyer. Now, CBIC has prescribed the procedure as below:

#### ***Manner of filing application for refund***

The following process needs to be followed by the unregistered buyer:

Step 1 – Obtain temporary registration for each supplier

Step 2 – Apply for refund under the category 'refund for unregistered person' on GST portal in Form GST RFD-01 (application for refund). Attach the necessary documents.

Step 3 – The acknowledgment / reference no. (ARN) shall be generated which can be used to track the status of the application.

The application can be filed within 2 years from the date of issue of letter of cancellation by the supplier.



## ***GST portal enables taxpayers to drop proceedings Suo-moto for suspension of GST registration***

If a taxpayer fails to file GST returns for a continuous period of 6 months, the registration may be suspended/ cancelled by GST department. The suspension/ cancellation may be revoked by filing all the pending GST Returns.

Earlier, if the taxpayer filed all the pending GST returns in response to a show-cause notice issued by the GST authorities but did not respond to the show-cause notice, the registration still remained suspended / invalid. The taxpayer had to necessarily approach the GST officer for revocation of the suspension. Thus, taxpayer had to face the inconvenience of a suspended GST registration even though it filed all the pending returns but did not respond to the show-cause notice.

The GST Network (GSTN) announced on Twitter that it has launched a new facility for such taxpayers to initiate drop proceedings suo-moto (i.e., on their own) once the pending returns are filed and revoke the suspension of their GST registration. In other words, if taxpayer has filed all the pending returns, and its registration status is still suspended, the taxpayer can revoke the suspension with a single click by initiating drop proceedings. It can do so by following the below link:

***Log on to GST portal > Services > User Services > View Notices and Orders > Click on 'Initiate Drop Proceeding'.***



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