

Tax alert: CBIC issues various notifications and circulars pursuant to the recommendations of 35th GST Council meet

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Summary

The GST Council in its 35th meeting held on 21 June 2019 took various decisions including extension of the due date for filing annual returns, extension of the term of the National Anti-profiteering Authority (NAA) and formation of State and the Area Benches for the Goods and Services Tax Appellate Tribunal (GSTAT) for various states and union territories amongst others. The Central Board of Indirect Taxes and Customs (CBIC) has now issued notifications and circulars giving effect to the various recommendations made by the GST Council.

Further, the CBIC has also issued various clarifications regarding the treatment of secondary or post-sales discounts under GST, the applicability of GST on additional/penal interest etc.

Key changes notified by CBIC

- **Extension of due dates**

| Forms | For the period | Revised due dates |
|----------------------------------|---------------------------|---|
| GSTR - 9, 9A and 9C ¹ | from Jul 2017 to Mar 2018 | 31 August 2019 |
| GSTR - 7 ² | Oct 2018 to Jul 2019 | 31 August 2019 |
| GSTR - 1 ³ | Jul to Sep 2019 | 31 October 2019 |
| GSTR - 1 ⁴ | Jul till Sep 2019 | 11 th of the succeeding month |
| GSTR - 3B ⁵ | Jul till Sep 2019 | 20 th of the month succeeding such month |
| GST - ITC 04 ⁶ | July 2017 to March 2019 | 31 August 2019 |

- **Special procedure for suppliers of OIDAR⁷**

Suppliers of online information and database access or retrieval services (OIDAR) from a place outside India to a person in India are not required to furnish annual return in Form GSTR - 9 and reconciliation statement in Form GSTR - 9C.

- **Amendments to the CGST Rules, 2017⁸ effective from 28 June 2019**

The CBIC has introduced the following new rules in the Central Goods and Services Tax (CGST) Rules, 2017.

| Rule | Description |
|------|--|
| 10A | Bank account details are required to be furnished not later than forty-five days from the date of grant of registration or the due date of |

¹ Order No. 6/2019-Central Tax
New Delhi, the 28 June 2019

² Notification No. 26/2019 - Central Tax
New Delhi, the 28 June 2019

³ Notification No. 27/2019 - Central Tax
New Delhi, the 28 June 2019

⁴ Notification No. 28/2019 - Central Tax
New Delhi, the 28 June 2019

⁵ Notification No. 29/2019 - Central Tax
New Delhi, the 28 June 2019

⁶ Notification No. 32/2019 - Central Tax
New Delhi, the 28 June 2019

⁷ Notification No. 30/2019 - Central Tax
New Delhi, the 28 June 2019

⁸ Notification No. 31/2019 - Central Tax
New Delhi, the 28 June 2019

| Rule | Description |
|---------------|--|
| | filing outward return whichever is earlier. |
| 32A | Value of supply for the purposes of levying Kerala Flood Cess shall be computed in accordance with the CGST Act, 2017 ⁹ . |
| 87(13) | A registered person shall transfer the amount ¹⁰ available in the electronic cash ledger to the electronic cash ledger for IGST, CGST, SGST or UTGST or Cess in Form GST PMT-09 |
| 95A | Application of refund of taxes to retail outlets, making a tax-free supply to an outgoing international tourist, established in the departure area of an international airport shall be made in Form GST RFD – 10B on a monthly or quarterly basis along with self-certified compiled information of sale and purchase invoices made during the month or the quarter ¹¹ . |

Key clarifications issued by CBIC

- **Clarification regarding applicability of GST on additional/penal interest¹²:**

The CBIC has clarified that interest including penal interest falls within the definition of interest as contained in the said notification¹³. Accordingly, it has been clarified that such interest does not fall

within the ambit of entry 5(e) of Schedule II of the CGST Act.

Further, it has been clarified that if penal interest is charged in addition to the interest component included in EMI, the amount of penal interest is to be included in the value of supply and would be taxable irrespective of the manner of invoicing.

It has also been clarified that service fee/charge or any other charges that are levied in respect of a transaction relating to extending deposits, loans or advances does not qualify as interest and accordingly will not be exempt.

- **Manner of determination of place of supply in certain cases¹⁴:**

- **Various services by ports:** It has been clarified that services provided by ports are ancillary to or related to cargo-handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the relevant provisions¹⁵ under the IGST Act depending upon the terms of the contract between the supplier and service recipient.

- **Services on unpolished diamonds¹⁶ temporarily imported into India and not put to any use in India:** Place of supply would be determined as per the relevant provisions¹⁷ of the IGST Act.

⁹ Section 15

¹⁰ Amount of tax, interest, penalty, fee or any other amount

¹¹ Circular No. 106/25/2019-GST dated 29 June 2019

¹² Circular No. 102/21/2019-GST dated 28 June 2019

¹³ No. 12/2017- Central Tax (Rate) dated 28 June 2017

¹⁴ Circular No. 103/22/2019-GST dated 28 June 2019

¹⁵ Section 12(2) or Section 13(2) of the Integrated Goods and Services Tax Act, 2017 (IGST Act)

¹⁶ Such as cutting and polishing activity

¹⁷ Section 13(2) of the IGST Act

- **Processing of refund applications in Form GST RFD-01A wrongly mapped on the common portal¹⁸:**

It has been clarified that where reassignment of refund applications to the correct jurisdictional tax authority is not possible on the common portal, the processing of the refund claim would be processed by the tax authority to whom the refund application has been electronically transferred by the common portal.

In such cases, after completion of processing, the refund-processing authority may inform the common portal about the incorrect mapping with a request to update it suitably on the common portal to ensure that all subsequent refund applications are transferred to the correct jurisdictional tax authority.

- **Clarification on treatment of secondary or post-sales discounts under GST¹⁹:**

| Type of discount | Treatment |
|---|---|
| Post-sale discount without any further obligation for dealer | Such discount shall be treated as related to the original supply of goods and hence would not be included in the value of supply. |
| Additional discount in the nature of post-sale incentive requiring certain actions from dealer | This shall be considered as a separate transaction on which GST shall apply. The discount shall be the consideration for the supply of service by a dealer. |

| Type of discount | Treatment |
|---|---|
| Additional discount given to a dealer to augment sales by offering special reduced prices | This additional discount represents consideration flowing from the supplier to the dealer and would be added to the consideration payable by the customer, for the purpose of arriving at the value of supply in the hands of the dealer. |
| Post-sale discount granted by the supplier of goods is not permitted to be excluded from the value of supply | Dealer is not required to reverse ITC attributable to the tax already paid on such post-sale discount received by him/her through issuance of credit notes by the supplier of goods as long as the dealer has paid the value of the supply and tax post adjustment. |

¹⁸ Circular No. 104/23/2019-GST dated 28 June 2019

¹⁹ Circular No. 105/24/2019-GST dated 28 June 2019

Our comments

The extension of the timeline for filing the annual return is a welcome relief for taxpayers and businesses at large. This will provide much needed time to business concerns for preparation, reconciliation and finalisation of data.

Further, the issuance of clarification by CBIC on the applicability of GST on penal interest has put the ambiguity to rest. It is a welcome relief as recently the Maharashtra AAR, in the case of Bajaj Finance, had ruled that such penal interest charges for delayed payment shall be liable to GST.

The direction given for processing refund application even in cases where it is wrongly mapped on the common portal is also taxpayer-friendly and should help in boosting the overall morale of the taxpayers.

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